

Exhibit E

Confirmation Hearing Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 22-11068 (JTD)
FTX TRADING LTD., et al.,
(Jointly Administered)
Courtroom No. 5
824 North Market Street
Debtors. Wilmington, Delaware 19801
Monday, October 7, 2024
10:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 10:00 a.m.)

2 (Call to order of the Court)

3 THE COURT: Good morning, everyone. Thank you.
4 Please be seated.

5 Mr. Landis.

6 MR. LANDIS: Good morning, Your Honor. May I
7 please the Court, Adam Landis from Landis Rath & Cobb on
8 behalf of FTX Trading Ltd., and its related debtors and
9 debtors-in-possession.

10 Your Honor, this morning, shortly before 9, we
11 filed our second amended agenda, in connection with this
12 hearing, reflecting -- including a revised confirmation order
13 and reflecting the resolution of one additional objection of
14 the foreign representatives of Three Arrows Capital. We
15 would propose to proceed in order of the agenda this morning.
16 Items Nos. 1 and 2 have been resolved. That leaves us with
17 Item No. 3 to go forward, that is confirmation of the
18 debtors' second amended plan. We would propose to have Mr.
19 Dietderich address the Court first and then Mr. Glueckstein
20 handle the confirmation matters.

21 THE COURT: Okay. Thank you.

22 MR. LANDIS: Thank you, Your Honor.

23 MR. DIETDERICH: Thank you, Mr. Landis. For the
24 record Andy Dietderich, Sullivan & Cromwell, for the debtors.

25 As Mr. Landis said, Your Honor, Mr. Glueckstein

1 will address our affirmative case for confirmation and the
2 remaining objections. I would like to say, if it pleases the
3 Court, a few words on background.

4 THE COURT: I am not they can hear you in the
5 back. You might have to --

6 MR. DIETDERICH: Is this better, Your Honor?

7 THE COURT: Lift up the microphone so they're
8 closer to you.

9 MR. DIETDERICH: How about this, testing one, two,
10 three.

11 THE COURT: Can you hear in the back? Okay,
12 you're good.

13 MR. DIETDERICH: I will try my best to project.

14 THE COURT: Okay.

15 MR. DIETDERICH: Turning back the clock, Your
16 Honor, FTX filed on November 11th, 2022. At the time it was
17 correctly seen as one of the most complex bankruptcy cases
18 ever attempted. It had the scope of a diversified financial
19 institution like Lehman, but with digital assets, no
20 effective regulatory system, the absence of accurate books
21 and records, competing foreign jurisdictions seeking to
22 displace this Court, and a team of founders that faced not
23 just investigation, but active criminal prosecution.

24 Less than 23 months later, we are here
25 contemplating what effectively is a fully consensual one day

1 confirmation hearing. There are some remaining objections to
2 resolve, but what is striking is the lack of any plan
3 critical objection by any major stakeholder. What marks the
4 resolution of this extraordinary case is not the level of
5 customer recovery merely, it is the level of consensus.

6 How did we get here? The answer is experienced
7 leadership. At the start, Mr. Ray and the board made three
8 key decisions. Everything else is a consequence of those
9 decisions. The first was that former management would have
10 no role in these cases. This meant not only excluding
11 compromised and potentially compromised employees, it meant
12 creating a new corporate organizational structure, a new
13 system of corporate governance, the migration of digital
14 assets to new custodians, new financial and tax reporting
15 systems, and new cash management and financial controls.

16 The result of this effort was credibility. That
17 effort took time. We were not able to say as much as we
18 wanted to say at the beginning of this case but after we had
19 done the work and were able to speak what we did say was
20 credible and there could be no restructuring without the
21 effort we spent early building the ability to produce
22 credible information.

23 The second decision we would cooperate with
24 government authorities. At the first meeting of the company
25 the board determine that cooperating with the many government

1 investigations and compiling and providing information to
2 those investigations from a centralized repository was in the
3 economic best interest of FTX and its creditors. We did not
4 do this just because it was the right thing to do. We did it
5 because it was beneficial to creditors and there is no
6 decision we have made since that has created more
7 distributable value.

8 It is our posture of cooperation for the
9 government that has avoided criminal indictments of the
10 debtor. That posture has allowed us to coordinate asset
11 recovery with governmental actors, it has positioned us to
12 conform the bankruptcy code definition of creditor with the
13 criminal law definition of victim and to stand here today
14 proposing a plan where unlike Madoff or other cases
15 substantially all value will be distributed to creditors in a
16 single centralized distribution process.

17 That posture has also avoided the assessment of
18 fines and penalties that would have reduced creditor
19 recoveries. In fact, it has resulted in the voluntary
20 subordination of governmental claims, not just a bankruptcy
21 petition time value but to an unprecedented 9 percent post-
22 petition interest rate. It even has resulted in the
23 subordination of federal income taxes for the prepetition and
24 the post-petition period. None of this would have been
25 possible without the initial decision to fully cooperate with

1 the government.

2 The third decision was that we would not make
3 business decisions alone. We would do so with consensus with
4 the statutory committee and the other major stakeholders.
5 This was critical because of the difficulty of the business
6 judgments we faced. Our assets were incredibly diverse and
7 often novel and hard to value. Virtually all of them were
8 highly volatile.

9 What if we sold something and then it went up?
10 What if we held something and then it went down? Mr. Ray and
11 the board's answer was not to make those decisions themselves
12 alone. The most important example of this was the process
13 created for the liquidation of digital assets where the UCC
14 and later the ad hoc committee of customers made decisions
15 side by side with management. Often this meant we could not
16 move as fast as we might wish. Where we did not have
17 consensus, rather than run to Court and seek an order from
18 Your Honor we tried harder to reach agreement, but when
19 decisions were made they reflected everyone's views.

20 The number of important motions entered by this
21 Court without objection or hearing is testament to the power
22 of this approach. Collaboration, Your Honor, is also the key
23 to understanding the plan. Confirmation in this case is not
24 the creation of a building. It is the laying of a capstone.
25 The last piece that balancing everything and locks the other

1 pieces into place.

2 I should draw the Court's attention, before we get
3 to the plan in chief, to a few of those other pieces that
4 have been absolutely critical. We have been thinking about
5 this day for almost two years. The first piece was the
6 settlement with the Bahamas. The Bahamas began this case as
7 a jurisdictional war. Had that war been allowed to continue
8 the loss of value to creditors would have been excessive.
9 The Bahama settlement solved this problem with a novel
10 solution worked out with our friends at FTX Digital Markets.

11 That solution was the economic and procedural
12 consolidation of the Chapter 11 cases with the proceedings in
13 the Bahamas under a structure that did so by contract rather
14 than requiring extensive and expensive coordination
15 proceedings and lots of Court time. That settlement has
16 already been approved by Your Honor and the Court in the
17 Bahamas, but its effectiveness is conditional on the
18 confirmation of the plan today.

19 A second critical stone was the global settlement
20 with customers. That settlement resolved after many months
21 of discussion. The dispute between FTX and all of its
22 organized customer constituencies concerning whether digital
23 asset entitlements should be treated as claims or property
24 interests. The settlement recognizes what became the
25 consensus view that customers do not have a legal interest in

1 property but that something happened here that as an
2 equitable matter suggests customers should have some priority
3 over general unsecured creditors.

4 The way the plan addresses this, consistent with
5 the general approach of substantive consolidation of the
6 debtors is to identify exchange shortfalls and create a
7 special priority intercompany claim that benefits all of the
8 customers of each exchange to the extent of that shortfall.
9 That settlement also, Your Honor, is to be finalized by
10 confirmation today. Other important pieces were a settlement
11 with the IRS, with the CFTC, with state AG's, with the
12 liquidators in Australia, with Emergent, and with the MDL
13 Plaintiffs. All of those settlements have an effectiveness
14 condition that is waiting for confirmation of the plan.

15 Now, Your Honor, I would like to address one
16 settlement that hasn't happened yet. We still do not have an
17 understanding with the Department of Justice concerning the
18 over a billion dollars in forfeiture proceeds they are
19 holding in connection with the criminal prosecution of the
20 founders. We are in discussions with the Department of
21 Justice.

22 What we have done in the meantime is to reach
23 consensus with the other parties besides FTX that have
24 competing claims against this money. We resolved our
25 difficulties -- our differences, really, with Emergent, which

1 had a competing claim. We resolved our differences with the
2 MDL Plaintiffs who had their own competing claim. And we
3 have an understanding with the critical mass of the preferred
4 shareholders who also have a competing claim to this money as
5 well.

6 This raises the question I should address at the
7 outset because its one of the potentially confusing parts of
8 the plan and I want to get it right at the start of how we
9 see preferred shareholders in this case. It makes sense to
10 clarify this. The plan, Your Honor, is an absolute priority
11 plan. It pays creditors and other stakeholders in accordance
12 with bankruptcy priorities. And we do not anticipate there
13 will be any value available to preferred shareholders from
14 FTX in the plan. We are forecasting that their distribution
15 is zero. It may not be if we have extra money, but the
16 current forecast is the distribution is zero.

17 However, Your Honor, we are not the Department of
18 Justice. The DOJ has the forfeiture proceeds and the DOJ, as
19 a matter of criminal law, is not bound by the absolute
20 priority rule or bankruptcy priority scheme. Under criminal
21 law they see preferred shareholders as victims too. So, as
22 we contemplate an arrangement with the DOJ for release of
23 forfeiture proceeds to us, we must either litigate or
24 negotiate in the criminal proceeding how much of that
25 recovery is received by the FTX estate and how much the DOJ

1 decides to allocate the preferred shareholders.

2 The plan does not incorporate this settlement.

3 There is no preferred shareholder settlement in the plan;
4 however, as part of our discussion so far with the DOJ there
5 is a possibility that the DOJ will ask FTX to, effectively,
6 be its distribution agent or its paying agent for money to be
7 distributed by the DOJ to the preferred shareholders. Again,
8 we have a centralized distributional architecture and we
9 built that to be used by the government as well as by the
10 estate.

11 We included this possibility in the plan for
12 disclosure purposes but there is of yet no deal. I should
13 underscore that our understanding with the preferred
14 shareholders to approach the DOJ jointly and advocate for
15 this is only that, an understanding. With them it is not yet
16 an understanding with the DOJ.

17 Now the last thing I would like to address before
18 we go to the plan, Your Honor, is the process to building the
19 plan itself. In July 2023 the debtors filed publicly a first
20 draft of this plan expressly for the purpose of soliciting
21 comments from stakeholders. Mr. Ray, the board and the team
22 recognized that this case was too big and too important,
23 effected too many people for us to only solicit feedback from
24 the creditor professionals who happen to be around the table
25 already. This was a great decision.

1 We have received very meaningful feedback from
2 numerous creditors and governmental authorities that we could
3 incorporate into the plan and disclosure statement before we
4 launched. Almost a year later, this Court approved the
5 disclosure statement. We included in the disclosure
6 statement an unusual amount of background on the major
7 decisions reflected in the plan; in particular substantial
8 consolidation of the debtors and the comprehensive work done
9 by the debtors, the creditors committee, the ad hoc committee
10 of customers to explore strategic alternatives to the plan.

11 We launched customers and other creditors voted.
12 The voting, Your Honor, was overwhelming. The plan was
13 approved by 98 percent of voting creditors by amount and 96
14 percent of voting creditors by head count. The turnout was
15 extremely robust. This is not a case that had a silent
16 majority. The majority has clearly spoken. Over two-thirds
17 of all solicited claims around the world, Your Honor,
18 returned their ballots.

19 On behalf of Mr. Ray, the board and all of the
20 debtor professionals, this case represents some of the most
21 meaningful work of our careers. We thank the Court for its
22 guidance over this period and absent general questions I'd
23 like to hand the podium to Mr. Glueckstein and he will
24 present our case for confirmation.

25 THE COURT: Thank you, Mr. Dietderich. No

1 questions at this time.

2 MR. GLUECKSTEIN: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. GLUECKSTEIN: For the record Brian
5 Glueckstein, Sullivan & Cromwell, for the debtors.

6 As Mr. Dietderich has begun discussing, we are
7 here today seeking confirmation of the debtors plan of
8 reorganization. We filed this morning, at Docket No. 26313,
9 the most up to date form of the confirmation order that
10 incorporates a number of changes to resolve a number of
11 objections.

12 The consensus in support for the plan reflected in
13 the voting results is further illustrated by the lack of
14 objections that were filed, many of which, we are pleased to
15 report, the debtors have since been able to resolve. The
16 list of objections and status is contained in the chart
17 attached as Exhibit 1 to our reply brief. Your Honor, since
18 the filing we have continued to work hard to resolve
19 objections to the greatest extent possible and have since
20 resolved the objection of ELD Capital, Three Arrows Capital,
21 RQ Capital, and we have resolved all but one remaining issue
22 in the objection of the Office of the United States Trustee.
23 We will address those objections as we proceed today.

24 If it pleases the Court, we intend to first
25 address the evidentiary record for today's hearing before

1 moving to argument and addressing the remaining objections
2 thereafter which are mostly legal in nature.

3 The debtors have submitted declarations from four
4 witnesses comprising -- consisting of those witnesses direct
5 testimony and the debtors affirmative case in support of
6 confirmation. I will now address each.

7 Your Honor, the first witness of the debtors in
8 support of confirmation is James Daloia, senior director at
9 Kroll Restructuring. Mr. Daloia submitted a declaration at
10 Docket No. 26045, which addresses solicitation and the voting
11 results. At this time, Your Honor, the debtors respectfully
12 move to admit Mr. Daloia's declaration into evidence in
13 support of plan confirmation. Mr. Daloia is in the courtroom
14 and available for cross-examination.

15 THE COURT: Is there any objection?

16 (No verbal response)

17 THE COURT: Its admitted without objection.

18 (Daloia declaration received into evidence)

19 THE COURT: Does anyone wish to cross the witness?
20 We have one taker.

21 MR. GLUECKSTEIN: Mr. Daloia, can you come
22 forward.

23 THE COURT: Mr. Daloia, if you could take the
24 stand please. Remain standing for the oath.

25 JAMES DALOIA, DEBTOR WITNESS, SWORN

1 MR. DALOIA: James Daloia, D-A-L-O-I-A.

2 THE COURT: Thank you.

3 CROSS-EXAMINATION

4 BY MR. ADLER:

5 Q Good morning, Mr. Daloia.

6 A Good morning.

7 Q My name is David Adler and I represent the Kavuri
8 Plaintiffs and separately Seth Melamed, all of whom are
9 creditors of the estate.

10 I wanted to ask you questions, since you put the
11 solicitation affidavit together, you mention in the affidavit
12 that there were a number of packages that were never
13 delivered or that you learned after the fact were not
14 delivered. Can you elaborate on the that?

15 A There is not much to elaborate on. It just seems like
16 it is a post office error.

17 Q How did you determine what happened?

18 A Using our contacts we realized that, you know, making
19 calls, doing our research, finding out that these packages
20 were just not delivered. And taking the word of the
21 creditors that they never received a package.

22 Q So, you don't know whether everyone received a package,
23 do you? I mean there is no way to trace it, is there?

24 A There would be no way to tell if everyone actually
25 received their package. We trust the post office.

1 Q Now under the disclosure statement and solicitation
2 order the ballots were supposed to be mailed -- emailed,
3 excuse me, to the email of record of the creditors, is that
4 correct?

5 A Yes, if one was available.

6 Q Did you, in fact, send it to all creditors by email?

7 A If they had a valid email that was available, yes.

8 Q What efforts did you undertake to make sure that
9 ballots were delivered if you got something back saying that
10 the email was undeliverable?

11 A We would go through the records again to see if there
12 was another email address and if not, we would send it to any
13 physical address that we had on record.

14 Q Okay. Have you filed a list, under seal, with this
15 Court, identifying all the creditors who received the ballots
16 by email?

17 A That I am not -- I don't believe so.

18 Q Okay. Is there -- do you know if you have a list?

19 A We have records of those that would have had a bounce
20 back.

21 Q To your knowledge there is no affidavit of service on
22 file?

23 A No, not that I know of.

24 Q Are you aware of the issue with my client, Melamed, and
25 what happened to him?

1 A You would have to remind me specifically because there
2 were a number of issues that we --

3 Q He did not receive a ballot by email.

4 A Okay.

5 Q And the ballot package was mailed to him on Wednesday,
6 August 14th and it was mailed to his prior counsel. Got
7 there on August 16t and the ballot was returned. Does that
8 refresh your recollection?

9 A There was a number of instances. So, if you are
10 telling me that is the case I will believe it.

11 Q Okay. I just want to go back to the point that you are
12 aware of 50 to 75 of these instances, I think you said in
13 your declaration.

14 A Yes, roughly.

15 Q Okay. And are you aware that if a creditor was a
16 voting creditor and didn't return a ballot, he or she was
17 deemed to have released certain third parties?

18 A If that is what the release provisions say, yes.

19 Q Does that comport with your understanding?

20 A I believe so, but I --

21 Q I understand. What would happen if a creditor came
22 forward and tried to bring a claim at this point who hadn't
23 voted?

24 A A claim? I'm sorry.

25 Q A claim -- let me be mor precise. What would happen if

1 a creditor came forward and asserted a claim against a
2 release party under the plan who had not voted?

3 UNIDENTIFIED SPEAKER: Objection, Your Honor. It
4 calls for a legal conclusion.

5 THE COURT: Sustained.

6 BY MR. ADLER:

7 Q Let me ask you this question: In your experience -- how
8 long have you been in the restructuring field?

9 A About 15 years.

10 Q Have you submitted solicitation declarations before?

11 A Yes.

12 Q In your experience have you ever had a case where you
13 were seeking to -- or the debtors were seeking to obtain a
14 third-party release embodied in a plan where an affidavit of
15 service had not been filed identifying the creditors who had
16 received the ballots?

17 A Can you restate that? I'm sorry, I --

18 Q This plan calls for -- asks for a third-party release,
19 correct?

20 A Correct.

21 Q In your experience, in those types of cases, have you
22 ever had a situation where such a release was requested when
23 the parties who are granting the release are not identified
24 on an affidavit of service as having received the ballot?

25 A Not that I am aware of. They would normally all be on

1 the affidavit of service.

2 Q Let me back up. In your experience have you ever put
3 together a solicitation declaration without an affidavit of
4 service being on file indicating who the creditors were and
5 how they were served?

6 A No. The affidavit of service would always cover those
7 parties that were served, whether it be a ballot, a notice,
8 you know, any non-voting notice whether deemed to accept or
9 reject and the vote declaration would always reference that
10 affidavit of service.

11 Q Right. And in this case that affidavit of service is
12 not on file, is that correct?

13 A The affidavit of service is on file.

14 Q With all the names of the customers and how they were
15 served?

16 A Depending on the redaction rules within the case it
17 might say name on file, but otherwise it would have all the
18 names of the parties that were served and what they were
19 served with.

20 Q So, the unredacted version on file, the one under seal,
21 would have all the email addresses, is that correct?

22 A If they were on there, yes.

23 MR. ADLER: No further questions, Your Honor.

24 THE COURT: Redirect -- well, I should ask: Does
25 anyone else wish to cross?

1 (No verbal response)

2 THE COURT: Okay. Mr. Glueckstein.

3 MR. GLUECKSTIEN: No questions, Your Honor.

4 THE COURT: Okay. Thank you.

5 Thank you, Mr. Daloia. You may step down.

6 THE WITNESS: Thank you.

7 (Witness excused)

8 MR. GLUECKSTEIN: Your Honor, the second witness
9 of the debtor in support of confirmation is Steven P.
10 Coverick, managing director at Alvarez & Marsal North
11 America, LLC. Mr. Coverick submitted a declaration at Docket
12 No. 26041 which addresses facts relevant to the plan's
13 compliance with the bankruptcy code and approval of customer
14 priority and customer preference settlements, among other
15 things. The debtors respectfully move to admit Mr.
16 Coverick's declaration into evidence in support of
17 confirmation. Mr. Coverick is in the courtroom and available
18 for cross-examination.

19 THE COURT: Is there any objection?

20 (No verbal response)

21 THE COURT: Its admitted without objection.

22 (Coverick declaration received into evidence)

23 THE COURT: Anyone wish to cross Mr. Coverick?

24 Mr. Adler.

25 Please take the stand and remain standing for the

1 oath, sir.

2 THE COURT REPORTER: Please raise your right hand.
3 Please state your first name and spell your last name for the
4 Court record, please.

5 MR. COVERICK: Steven Coverick, C-O-V-E-R-I-C-K.

6 STEVEN COVERICK, DEBTOR WITNESS, SWORN

7 THE COURT: Mr. Adler, whenever you are ready.

8 CROSS-EXAMINATION

9 BY MR. ADLER:

10 Q Good morning, Mr. Coverick. My name is David Adler, I
11 represent the Kavuri Plaintiffs and Seth Melamed in this
12 proceeding.

13 I wanted to ask you a couple questions about your
14 declaration, particularly -- well, let's start off with the
15 solicitation process. Were you involved in the solicitation
16 process at all?

17 A I was involved in the solicitation process in a limited
18 capacity.

19 Q But not on the day-to-day stuff that was just --

20 A I was not involved in the individual solicitation to
21 creditors.

22 Q My next question for you is in your declaration you say
23 the plan exculpation provisions are appropriate and should be
24 approved. I wanted to ask you about the FTX recovery trust
25 exculpation agreement. Do you believe that exculpation

1 should be approved?

2 A I don't have the agreement in front of me, but I am
3 generally familiar with it. Yes, I do believe it should be
4 approved.

5 Q Are you aware that the exculpation covers the plan
6 administrator?

7 A Yes.

8 Q Does the plan administrator exist at the present
9 moment?

10 A I believe the plan administrator is a role that would
11 be created upon effectiveness of the plan, but I also
12 understand, as defined in the plan supplement that it is the
13 same individual that is currently serving as CEO of the
14 debtors.

15 Q Right. But will be a new title with new powers.

16 A That is my understanding. Yes, sir.

17 Q Were you involved at all in discussions over the scope
18 of that exculpation?

19 A Not in detail, but I am generally familiar and was
20 involved in the general negotiations surrounding the releases
21 and exculpations in the plan.

22 Q So, its Paragraph 8 of the, just so the record is
23 clear, plan administrator agreement. Its in the second
24 amended plan supplement, Docket No. 26226-2 filed on October
25 3rd. Paragraph 8 is the exculpation provision and the

1 exculpation has a change to it that was made from the last
2 amended -- last plan supplement where the carve outs to the
3 exculpation originally were fraud, gross negligence or
4 willful misconduct. That has now been changed in the latest
5 version to simply willful misconduct. Are you aware of that?

6 A I generally recall the change, but I am not a lawyer,
7 so I am not familiar with the specific reasons why the change
8 may have been made.

9 Q Okay. You believe that this exculpation is appropriate
10 based on your experience?

11 A Yes, sir.

12 Q How about the wind down entities. What are they under
13 Paragraph 8 of the exculpation?

14 A I'm sorry, I don't have it in front of me.

15 Q Generally speaking, do you know what the winddown
16 entities are under the plan?

17 A Yes, sir, I do.

18 Q Generally speaking, what are the winddown entities?

19 A The winddown entities generally consist of the
20 remaining debtor entities that will provide assets into the
21 FTX recovery trust upon effectiveness of the plan.

22 Q Right. Are they being consolidated?

23 A Substantially consolidated under the plan, that is
24 correct.

25 Q Right. Do the winddown entities presently exist as

1 that term is defined under the plan?

2 A The entities that comprise the general definition of
3 winddown entities, those do currently exist.

4 Q I also wanted to ask you some questions about crypto in
5 kind. Were you involved in efforts by the debtors to make
6 distributions to creditors in kind?

7 A I have been involved in the general discussions and
8 negotiations with the major stakeholders in this case
9 surrounding the mechanisms under which the debtors may be
10 able to make plan distributions.

11 Q Can you tell us what efforts were made to attempt to
12 distribute in kind?

13 A So, in general, the plan does not provide for in kind
14 distributions. That was a topic that was discussed at length
15 with major stakeholders in the case including the official
16 committee of unsecured creditors, the ad hoc committee, as
17 well as other stakeholders. There were a number of factors
18 involved in the decision to make cash distributions pursuant
19 to the plan. I would be happy to elaborate on some of those
20 decisions if that is helpful.

21 One, the debtors do not have the cryptocurrency that
22 would be required to make in kind distributions and, in fact,
23 never had the cryptocurrency and the proportions in which
24 customers believed they had in their accounts. The
25 cryptocurrency that the debtors did have has largely been

1 liquidated pursuant to the asset monetization order that was
2 entered, I believe, approximately a year ago in consultation
3 with the official committee of unsecured creditors and the ad
4 hoc committee.

5 So, the most important factor is the debtors simply
6 don't have the crypto to distribute in kind. That would mean
7 the debtors would have to purchase that cryptocurrency on the
8 open market in order to make in kind distributions. There is
9 a number of complicating factors that were considered with
10 regard to what that purchase would require, what the
11 logistics of such a complex distribution would be and in
12 consulting with the unsecured creditors committee and the ad
13 hoc committee, we determined, collaboratively, that it would
14 not be feasible and would, in fact, result in potentially
15 inequitable creditor recoveries for members of the same
16 class.

17 Further, we determined it would be exorbitantly
18 expensive to undertake such a large purchase. It would
19 require the purchase of billions of dollars of cryptocurrency
20 on the open market, there would be new professionals that
21 would have to be retained or additional administrative costs
22 that would be incurred to safeguard those assets while
23 waiting to make those distributions.

24 There would be, what we generally refer to as, slippage
25 where the debtors would effectively have to set a record date

1 and calculate the exact amount of cryptocurrencies that would
2 have to be purchased for a given distribution. Once that
3 quantity was set at a record date the debtors would then have
4 to go purchase billions of dollars of cryptocurrencies in
5 those quantities which would, in consultation with our
6 investment fiduciary, Galaxy, we have been informed would
7 result in a runup in the market.

8 So, in other words, we would have to overpay for those
9 same quantities which would come at a detriment to other
10 creditors in the case. So, those were the major factors in
11 addition to the fact that, in my understanding, there is
12 nothing in the bankruptcy code that requires a debtor to make
13 in kind distributions.

14 Q Were you aware of the fact that customers who received
15 cash when they had crypto may have a taxable event?

16 A I am not a tax professional, but I have --

17 Q Neither am I.

18 A -- discussed the topic with the debtors tax
19 professionals. I understand that to be a very complicated
20 topic and one that is predicated on the individual
21 circumstances of each customer, which jurisdiction they sit
22 in, the underlying nature of their entitlement. Its very
23 complicated and I am aware that there is not a conclusive
24 opinion amongst the tax professionals in this case that in
25 kind distributions would or would not eliminate tax exposure

1 of a customer.

2 Q Fair enough for non-tax advice.

3 You mentioned that this consideration of distributing
4 crypto in kind was done internally. Were efforts made to
5 reach out to third parties to act as an agent for the
6 customer for crypto distributions?

7 A There have been many efforts and those efforts are
8 still ongoing to identify distribution agents that would be
9 required to make distributions under the plan. There were
10 discussions with those distribution agents as to what their
11 capabilities may be with regard to cryptocurrencies. As I
12 understand, in the plan -- I actually forget if it's the plan
13 or the disclosure statement, but the debtors mention that
14 they're exploring the possibility of making some
15 distributions in stablecoin. So, that is a topic that has
16 been discussed with some of those potential distribution
17 agents. So, yes, there were many discussions.

18 Q Were you involved in any of the other crypto
19 bankruptcies that have been filed since 2022?

20 A No, sir. Not personally.

21 Q Okay. I will represent to you that in BlockFi it had
22 simply cash and it managed to retain in Coinbase as its agent
23 to convert the cash distribution to crypto for customers who
24 wanted to receive in kind. Was any attempt made to do that
25 in this case?

1 A I am aware of the general distribution scheme in
2 BlockFi. I did not serve as financial advisor to BlockFi, so
3 I can't speak to the factors that led to them making that
4 decision. I understand the cases to be very different cases,
5 the nature of the customer base to be very different, the
6 scope of the customer base, general size of the creditor
7 population. So, again, I would just cite the factors that I
8 am aware of as to why the FTX debtors made the decision not
9 to do in kind distributions, but I can't speak to how BlockFi
10 came to that conclusion.

11 Q Okay. Were efforts made to -- or were discussions had
12 with Coinbase or PayPal?

13 A As I mentioned, we had discussions with a number of
14 parties. You know, due to the ongoing nature of those
15 discussions I think there's competitive concerns with
16 disclosing any individual names of distribution agents that
17 we have spoken to.

18 Q Last topic is the fees to be paid to the various
19 entities created on the effective date. So, we have the plan
20 administrator, we have the board for the FTX recovery trust,
21 we have the advisory committee, we have the Delaware
22 litigation trustee, and nowhere in the plan supplement is
23 compensation disclosed for those entities. Can you tell me
24 why?

25 A Well, I don't entirely agree with that. In the plan

1 supplement we included a winddown budget. That winddown
2 budget was prepared by the debtors, approved by the debtors
3 current board of directors and includes a level of detail as
4 to what is included in the winddown budget. One of those
5 items lists governance which includes all of the plan
6 administrator, the recovery trust board, creditor advisory
7 committee, etc., and that estimate and total is included in
8 the winddown budget.

9 Q Is it broken down on a line-by-line basis?

10 A No, sir, it is not.

11 Q Okay. How did you go about making those estimates
12 without knowing the compensation to be paid?

13 A Well, I don't think we can know with certainty what
14 compensation would be paid to the plan administrator
15 specifically because that will be set by the winddown board
16 and that board does not exist today. So, we could not
17 discuss it with that board; however, we did use an analysis
18 of run rates of the existing compensation. We reviewed it
19 with both the individual that is slated to be serving as the
20 plan administrator and eventually the current board of the
21 debtors who all felt that the estimate that was included in
22 the winddown budget was reasonable.

23 Q Can you give me a range of what that estimate was for
24 various entities? Let's take the board of directors for the
25 FTX recovery trust. Do you recall what the --

1 A The total of all the governance costs in the winddown
2 budget is, I believe, I don't have it in front of me, but if
3 I recall its \$34 million in total for the three-year
4 projected winddown period. I don't have memorized the
5 individual line items behind that, but that is something that
6 my team did put together when preparing the winddown budget.

7 Q So, the estimate from you was \$34 million in total for
8 the winddown governance?

9 A Yes, sir.

10 Q Last question, what is the joint board?

11 A The joint board, I would have to look at the
12 definition. I'm sorry, sometimes we speak in general terms.

13 Q I ask because I thought I might have misread it the
14 first time, but its referenced in the compensation provision,
15 I believe, of the FTX recovery trust that the board -- the
16 FTX recovery trust board will receive the same compensation
17 as the joint board.

18 A Okay.

19 Q I have not seen the joint board defined anywhere in the
20 plan supplement documents.

21 A Understood. I don't have it in front of me, but I can -
22 - I believe I understand what it means. I believe its
23 referring to the debtors existing board of directors, but I
24 can't be certain. I would need to see the definitions in
25 front of me.

1 Q What is the current compensation of the debtors board
2 of directors?

3 A I believe each member of the board of directors has a
4 compensation of \$50,000 a month.

5 Q Are there any other fees that will be payable at any
6 point to the board other than the stipend?

7 A No, sir, not that I'm aware of.

8 Q So, there aren't incentive fees upon emergence from
9 bankruptcy or anything of that nature?

10 A No, sir, not that I'm aware of.

11 MR. ADLER: That's all I have, Your Honor.

12 THE COURT: Thank you.

13 Does anyone else want to cross?

14 MR. DALSEN: May I proceed, Your Honor?

15 THE COURT: Yes.

16 MR. DALSEN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. DALSEN:

19 Q Good morning, Mr. Coverick.

20 A Good morning.

21 Q We met before. My name is William Dalsen from
22 Proskauer Rose. I represent the LayerZero Group.

23 Now we met previously when you were deposed in this
24 proceeding, is that right?

25 A Yes, sir.

1 Q And at that deposition you testified on behalf of FTX
2 Trading Ltd. and its affiliated debtors and debtors-in-
3 possession, correct?

4 A Yes, sir.

5 Q And if I refer to FTX Trading Ltd. and its affiliated
6 debtors and debtors-in-possession as simple FTX is that okay
7 with you?

8 A Yes, sir.

9 Q Thank you.

10 At that deposition you were prepared to testify on
11 behalf of FTX as to the customer preference settlement,
12 correct?

13 A That's correct.

14 Q Out of curiosity, before you took the stand, somebody
15 handed you something in a manila envelope. Is that before
16 you?

17 A It is.

18 Q What is it?

19 A It's my declaration.

20 Q Got it. Thank you.

21 Mr. Coverick, you are familiar with the second amended
22 joint Chapter 11 plan of reorganization of FTX Trading Ltd.
23 and its affiliated debtors that is the subject of this
24 hearing today, correct?

25 A Correct.

1 Q Do you have a copy of the plan with you?

2 A I do no

3 MR. DALSEN: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MR. DALSEN:

7 Q Mr. Coverick, I have handed you what was Exhibit 2 from
8 your deposition. Can you tell us what this is?

9 A It is the second amended joint Chapter 11 plan of
10 reorganization of FTX Trading Ltd. and its debtor affiliates.

11 Q And if I just call that the plan, would that be okay
12 with you?

13 A Yes, sir.

14 Q Okay. And now you are familiar with the plan because
15 you reviewed it and because you were involved in the
16 negotiations and formation of the plan, right?

17 A That is correct.

18 Q You are also familiar with the customer preference
19 settlements in the plan, correct?

20 A That is correct.

21 Q And you are familiar with the customer preference
22 settlement because you reviewed it and you were involved in
23 this negotiation, correct?

24 A Correct.

25 Q If you could turn to page 50 of this exhibit, I just

1 handed to you, the plan, and specifically I want to ask you
2 about Section 5.5. Just let me know when you are there.

3 A I'm there.

4 Q Section 5.5 of the plan is a description of the
5 customer preference settlement, correct?

6 A Correct.

7 Q If you turn to page 51, please, which is also still
8 Section 5.5, let me know when you are there.

9 A I'm there.

10 Q Do you see the first full paragraph beginning the
11 debtors shall not designate?

12 A I do.

13 Q And this paragraph contains what you would call the
14 objective set of criteria under which all preference claims
15 should be reviewed, correct?

16 A That is correct.

17 Q The debtors did not use any criteria other than those
18 listed in this Paragraph of Section 5.5 to identify which
19 customer preference actions to exclude, correct?

20 A That is correct.

21 Q I want to ask you about the application of these
22 criteria now in Section 5.5. Sir, debtors counsel reviewed
23 each customer preference claim to determine whether it met
24 one of those criteria in Section 5.5, is that right?

25 A That's correct.

1 Q Specifically, debtors counsel reviewed the base of
2 potential preference claims against the list of criteria and
3 for any claims that met one of the criteria they were
4 included in the plan supplement, is that right?

5 A On the list of excluded customer preference actions,
6 yes.

7 Q You had no direct involvement with the process of
8 reviewing claims against the set of criteria included in the
9 plan, correct?

10 A No, that is a process that was conducted by debtors
11 counsel.

12 Q You did not discuss with debtors counsel the specific
13 consideration of individual claims on the list of excluded
14 customer preference actions, correct?

15 A That is correct.

16 Q The FTX board of directors did not review each
17 individual claim that was set to be designated as an excluded
18 customer preference action, correct?

19 A To the best of my knowledge that is correct.

20 Q In fact, the FTX board did not review any particular
21 customer preference action that was designated as an excluded
22 customer preference action in the plan supplement, correct?

23 A On an individual basis I believe that is correct.

24 Q You were not involved with the attorneys at debtors
25 counsel who conducted the review of these claims, right?

1 A No. As I stated, that was a process conducted by
2 debtors counsel.

3 Q And you personally did not decide whether any customer
4 preference action should be excluded under these criteria on
5 the second paragraph of Section 5.5, correct?

6 A Correct.

7 Q The debtors designated LayerZero Labs as an excluded
8 customer preference action because the debtors do have a
9 filed complaint against the LayerZero Group, correct?

10 A Correct.

11 Q And its your understanding that LayerZero Labs,
12 therefore, meets the criteria listed in Section 5.5(b) of the
13 plan to be an excluded customer preference action, correct?

14 A Correct.

15 Q Other than referring to the adversary complaint filed
16 against the LayerZero Group, there is nothing more you can
17 tell the Court about why LayerZero Labs was excluded under
18 Section 5.5 because you were not involved with the attorneys
19 at debtors counsel who conducted the review of claims,
20 correct?

21 A Again, to be clear, I pointed to the adversary
22 complaint as containing the relevant information for why
23 LayerZero Labs and the LayerZero Group in general met the
24 criteria. There is a lot of information in that complaint. I
25 am not a lawyer, so I can't speak to the legalities or merits

1 of the items included in the complaint, but I pointed to the
2 complaint as the supporting document, as well as the many
3 underlying documents behind that complaint as the reason for
4 why I believe LayerZero Labs and LayerZero Group met the
5 criteria for being on the list.

6 Q You did not draft that complaint, correct?

7 A I did not.

8 Q You do not refer to that complaint in your declaration,
9 correct?

10 A I do not.

11 Q You did not review the documents underlying the
12 adversary complaint to draft that complaint, correct?

13 A Not to draft the complaint, no.

14 Q You did not know all of the documents that debtors
15 counsel used to draft the complaint, correct?

16 A I don't have them memorized, but I am aware of their
17 general existence.

18 Q Mr. Ari Litan is also on the excluded customer
19 preference list because the debtors have a cause of action
20 against him, correct?

21 A Correct.

22 Q Skip & Goose, another of my clients, is also on the
23 excluded customer preference list because the debtors have
24 filed a cause of action that includes Skip & Goose, correct?

25 A Correct.

1 Q And there are no other facts or information you can
2 share with us as to why the debtors determined that Skip &
3 Goose would be excluded from the customer preference
4 settlement, correct?

5 A Again, I point to all of the facts and statements in
6 the adversary complaint that include Mr. Litan and Skip &
7 Goose's defendants.

8 MR. DALSEN: I will pass the witness, Your Honor.

9 THE COURT: Thank you.

10 Does anyone else want to cross?

11 (No verbal response)

12 THE COURT: Mr. Glueckstein, go ahead.

13 MR. GLUECKSTEIN: No questions, Your Honor.

14 THE COURT: Thank you. You may step down, sir.

15 (Witness excused)

16 THE COURT: Mr. Dalsen, did you sign in on the
17 sign-in sheet? I don't see your name listed.

18 MR. DALSEN: (Indiscernible).

19 MR. GLUECKSTEIN: Thank you, Your Honor.

20 Continuing with the debtors case in support of confirmation,
21 our third witness, Your Honor, is Edgar W. Mosley II,
22 managing director at Alvarez & Marsal North America, LLC.
23 Mr. Mosley submitted a declaration at Docket No. 26044 which
24 addresses facts relevant to the debtors operations of the FTX
25 exchanges, the debtors positions as to the estate, and

1 substantive consolidation, among other things.

2 Your Honor, the debtors respectfully move to admit
3 Mr. Mosley's declaration and attached exhibits which are
4 Exhibits 2 through 6 on our exhibit list that we submitted in
5 advance of the hearing into evidence in support of
6 confirmation. Mr. Mosley is in the courtroom and available
7 for cross-examination.

8 THE COURT: Anyone object to the introduction of
9 the declaration and the exhibits?

10 (No verbal response)

11 THE COURT: They are admitted without objection.

12 (Mosley declaration received into evidence)

13 THE COURT: Anyone wish to cross?

14 Mr. Mosley, come forward.

15 THE COURT REPORTER: Please raise your right hand.
16 Please state your full name and spell your last name for the
17 Court record, please.

18 MR. MOSLEY: Edgar Mosley, II, M-O-S-L-E-Y.

19 EDGAR MOSLEY, II, DEBTOR WITNESS, SWORN

20 THE COURT: Mr. Adler, whenever you are ready.

21 CROSS-EXAMINATION

22 BY MR. ADLER:

23 Q Good morning, Mr. Mosley. My name is David Adler, I
24 represent the Kavuri Plaintiffs and Mr. Seth Melamed.

25 I just had a few questions for you today which was were

1 you involved in the operational aspects of FTX post-petition?

2 A I was.

3 Q Were you involved at all in the discussions about
4 trying to make a crypto in kind distribution to creditors?

5 A Yes, I was.

6 Q Can you tell me or tell the Court what those
7 discussions consisted of?

8 A Consistent with Mr. Coverick's testimony, I was
9 involved in many of the same meetings and discussions with
10 the unsecured creditors, the ad hoc committee as well as
11 management and the board.

12 Q Are you aware, was there any attempt to reach out to an
13 exchange?

14 A To reach out to an exchange?

15 Q To convert the cash distribution to a creditor and to a
16 crypto distribution?

17 A As Mr. Coverick stated, we are, as the debtors, still
18 considering all of our options and the plan does leave open
19 the potential of distributing via stablecoins. So, yes, its
20 ongoing and we are talking to multiple parties about being a
21 distribution agent.

22 Q Approximately how many?

23 A I don't remember what the original list is. I think we
24 are down to four or five parties at this point.

25 Q Is it a competitive process?

1 A Yes, it is.

2 Q Are you seeking to retain that exchange as an agent for
3 the distribution?

4 A We are seeking to retain distribution agents to make
5 distributions on behalf of the estate. Does that answer your
6 question?

7 Q Well, are they prepared to make distributions in
8 stablecoin?

9 A We are looking at all options and some of those parties
10 will be able to make distributions in stablecoins.

11 Q Is there a term sheet with any of those parties?

12 A I am not certain as to whether or not there is a term
13 sheet right now. I don't recall if there is a term sheet
14 right now.

15 Q Is there a memorandum of understanding or something
16 more preliminary to a term sheet?

17 A There are discussions at this point.

18 Q But nothing in writing is what you are saying, correct?

19 A I am saying that I don't recall whether or not we have
20 one.

21 Q Were you involved in the discussions with respect to
22 the scope of the exculpation provision in the plan
23 administrator agreement?

24 A Broadly. I am clearly not as close to it as counsel,
25 management or Mr. Coverick, but broadly, yes.

1 MR. GLUECKSTEIN: Your Honor, (indiscernible). We
2 would object at this point. Mr. Mosley -- this is outside
3 the scope of Mr. Mosley's direct testimony which has been put
4 into evidence by his declaration.

5 THE COURT: Mr. Adler, you outside the scope.

6 MR. ADLER: My response is that he stated that he
7 was involved in the day-to-day operations of FTX and I am
8 trying to determine, you know, how that relates to the plan
9 process and specifically the plan supplement.

10 MR. GLUECKSTEIN: Your Honor, Mr. Adler did not
11 notice Mr. Mosley as a hostile witness for this hearing. He
12 is appearing as a witness on cross-examination on his direct
13 which was submitted by his declaration. Frankly, the prior
14 testimony was outside the scope as well, we let it go, but
15 now we are moving from more topics that are outside the scope
16 of his declaration.

17 THE COURT: I will give you a little leeway, Mr.
18 Alder, but let's keep it tight.

19 BY MR. ADLER:

20 Q Are you on the board of directors of the debtors right
21 now?

22 A I am not.

23 Q Okay. Will you be on the board of directors of the FTX
24 Recovery Trust?

25 A Not to my knowledge.

1 MR. ADLER: No further questions.

2 THE COURT: Thank you.

3 Redirect?

4 MR. GLUECKSTEIN: No redirect.

5 THE COURT: Okay. Thank you.

6 You may step down, sir. Thank you.

7 (Witness excused)

8 MR. GLUECKSTEIN: Okay. Your Honor Your Honor,
9 continuing with the Debtors' case, our fourth and final
10 witness this morning is the Right Honorable Lord Neuberger of
11 Abbotsbury, who is a former judge on the English Court of
12 Appeal and what became the U.K. Supreme Court. He was later
13 appointed Master of the Rolls on that court as a senior Court
14 of Appeal judge in the United Kingdom.

15 Lord Neuberger is also a leading expert on U.K.
16 law issues. We're lucky to have him here with us in the
17 courtroom today.

18 Lord Neuberger submitted a declaration at Docket
19 26042, pursuant -- in accordance with Rule 44.1 of the
20 Federal Rules of Civil Procedure to aid the Court with issues
21 as to the meaning and effect of the FTX.com in terms of
22 service, which are at the heart of the customer property
23 arguments being settled to the customer property settlement
24 contained in the plan.

25 Your Honor, at this time, the Debtors respectfully

1 move to admit Lord Neuberger's declaration into evidence in
2 support of confirmation. Lord Neuberger is also available
3 for cross-examination.

4 THE COURT: Okay. Is there any objection?

5 (No verbal response)

6 THE COURT: The declaration is admitted, without
7 objection.

8 (Neuberger Declaration received in evidence)

9 THE COURT: Anyone wish to cross?

10 (No verbal response)

11 THE COURT: No cross, thank you.

12 MR. GLUECKSTEIN: Your Honor -- thank you, Your
13 Honor. At this point, neither the Debtors, or as far as I'm
14 aware, the Court, have been provided notice of any witnesses
15 or evidence by any other party, so that seems it should close
16 the evidentiary record for the confirmation hearing.

17 THE COURT: Did you have any other, because I know
18 you admitted Exhibits 1 through 6 and there were 17 exhibits
19 on your exhibit list.

20 MR. GLUECKSTEIN: The remainder of the exhibits,
21 Your Honor, were filings in the case. We would just ask the
22 Court to take judicial notice of those exhibits.

23 THE COURT: Okay. Thank you. All right.

24 MR. GLUECKSTEIN: Thank you, Your Honor.

25 Then proceeding, with respect to our confirmation

1 case, and Mr. Dietderich covered a number of points and I
2 won't repeat them, the plan satisfies, Your Honor, and the
3 Debtors submit, all of the requirements of the Bankruptcy
4 Code and is overwhelmingly supported by each class that was
5 entitled to vote. As noticed, the plan provides for
6 recoveries on allowed claims that are projected to be paid in
7 full, plus interest, to all customers and non-governmental
8 creditors.

9 This result was inconceivable when the FTX Group
10 collapsed into bankruptcy less than two years ago.
11 Mr. Daloia's declaration details that every voting class
12 accepted the plan at 95 percent or more.

13 Mr. Coverick's declaration, now in evidence,
14 explains why the plan satisfies the requirements of the
15 Bankruptcy Code necessary for confirmation and also addresses
16 the Debtors' process and rationale for entering into the
17 customer priority settlement, that is an essential pillar of
18 the global settlement of claims in the plan.

19 The customer priority settlement provides a
20 negotiated resolution of arguments made that customers have
21 some form of property rights in the Debtors' assets that,
22 otherwise, would have required protracted litigation to
23 resolve on a final basis. As detailed in our confirmation
24 memorandum of law, and supported by the declarations now in
25 evidence of Mr. Mosley and Lord Neuberger, the Debtors

1 maintain that well-settled case law establishes that all of
2 the Exchange assets are presumptively part of the Debtors'
3 estates because they were commingled together and that the
4 customers could never satisfy their burden to both, one,
5 prove that they have any property rights, pursuant to any
6 trust or availment of relationship and, two, trace any assets
7 that they claim to own, any of the assets that are currently
8 part of the Debtors' estates.

9 The unrefuted evidence in the record from Lord
10 Neuberger and Mr. Mosley conclusively establish the Debtors'
11 positions and should put an end to the narrative still being
12 peddle by a few individual customers that they could have
13 property interests in the Debtors' assets. Those few still
14 advancing such arguments have claims arising from purchased
15 or traded digital assets on the FTX.com Exchange and,
16 therefore, as Mr. Mosley explains in his admitted
17 declaration, never had anything, other than a book entry
18 reflecting what was owed to them and, thus, no assets in any
19 deposit addresses at any time.

20 Nonetheless, as Mr. Mosley details in his
21 testimony, after the good faith, arm's-length negotiations,
22 the Debtors, the Official Committee, both the Ad Hoc
23 Committee and the Class Action Claimants who had asserted
24 customer property claims, all agreed to the customer priority
25 settlement in recognition of the arguments advanced by

1 customers and the fact that litigation of all such issues to
2 final judgment would be complex, burdensome, uncertain, and
3 could have delayed the conclusion of these cases and
4 distributions to creditors. The plan and this result is now
5 also supported by the putative class representatives in the
6 multidistrict litigation pending in Florida. The customer
7 priority settlement is reasonable and satisfies the standard
8 for approval, pursuant to Bankruptcy Rule 9019.

9 Your Honor, the settlements previously approved by
10 this Court, Mr. Dietderich walked there many of them,
11 including with the CFTC, the IRS, and other governmental
12 entities, facilitated the creation of the Supplemental
13 Remission Fund that's in the plan, which has the potential to
14 further increase customer and other eligible creditor
15 recoveries, and the formation of the Wind-down Trust through
16 the substantive consolidation of the Debtors, completes a
17 plan that the Debtors and virtually all of their stakeholders
18 have all agreed is the best possible option for resolving
19 these Chapter 11 cases and maximizing recoveries for
20 creditors and it should be confirmed.

21 There are, however, Your Honor, a few holdout
22 objections. As I noted at the outset, the Debtors have
23 worked to resolve, through changes to the plan and the
24 confirmation order, as many objections as possible and was
25 largely successful. We addressed, substantively, the

1 remaining objections filed in the Debtors' reply filed at
2 Docket 26039. Those objections that remain raise mostly
3 discrete, parochial issues by which the objector seeks to
4 hold everyone else hostage for their own personal benefit and
5 do not actually implicate the terms of the plan, and we
6 submit none have merit.

7 Unless the Court wishes to proceed differently, I
8 will generally address the remaining objections one at a time
9 by objector, but before I do, Your Honor, does the Court wish
10 to hear from any of the plan supporters at this point before
11 we get into the objections or later in the hearing?

12 THE COURT: If anyone wants to make a statement
13 now, that would be fine. And I think just to we move things
14 along, as we're going through the objections, I know there
15 are some overlapping objections, so I want to make sure
16 parties who have an overlapping objection, with regard to
17 whatever objection you are raising first or second or third,
18 they have the opportunity to respond --

19 MR. GLUECKSTEIN: Yes, Your Honor.

20 THE COURT: -- to make their arguments.

21 Do any other plan supporter wish to make an
22 opening statement?

23 MR. PASQUALE: Good morning, Your Honor.

24 Ken Pasquale from Paul Hastings for the Official
25 Committee of Unsecured Creditors.

1 Your Honor, the Committee is very pleased to
2 support confirmation of the plan today and looks forward to
3 distributions being promptly made to customers and all
4 creditors of the Debtors upon confirmation. We join in all
5 the substantive arguments set forth by the Debtors and join
6 in the request that the remaining objections be overruled.

7 When these cases began nearly two years ago, the
8 landscape for creditor recoveries was extremely uncertain.
9 The extent of the fraud by the Debtors' prepetition
10 management team was not yet known and cryptocurrency values
11 were extremely depressed. The Committee, during those first
12 few months, was focused on leveraging market opportunities
13 and expediting these bankruptcy cases to a conclusion.

14 It was with those goals in mind that in the summer
15 of 2023, the Committee filed a motion asking this Court to
16 order plan mediation. The Court never had to rule on that
17 motion because the Debtors, the Committee, the Ad Hoc Group,
18 and the other stakeholders soon thereafter began good faith
19 plan discussions, which were quite difficult at times, but
20 because of the professionalism of many in this courtroom,
21 those meetings resulted in a number of the agreements upon
22 which the plan today is founded, including, as you just
23 heard, the customer priority settlement.

24 There were plenty of bumps and disagreements
25 between the parties along the way, but we were able to

1 resolve those disputes, as Mr. Dietderich said, without
2 bringing them to the Court's attention and I think we're all
3 very proud to be able to say that today and to be able to
4 have done that.

5 It is a testament, again, to the parties in this
6 room that the plan not only held together, but resulted in
7 important components that maximized recoveries to creditors,
8 including providing post-petition interest to creditors at
9 the 9 percent consensus rate, the Supplemental Remission
10 Fund, those going to most creditors, and the establishment of
11 the Creditor Advisory Committee to assist in post-effective
12 date management of the estates.

13 Certainly, we benefited from a bull crypto market
14 over the last year, but it is because of the hard work of the
15 Debtors, the Committee, and the other stakeholders that we
16 were able to take advantage of those markets to maximize the
17 monetization of the Debtors' digital assets and to put these
18 cases in a position to not only conclude, but to conclude
19 while returning a par-plus recovery to unsecured creditors.

20 The Committee and all of its professionals extend
21 our sincere thanks to the Court, to the Court's staff for its
22 attention to these cases over these nearly two years and we
23 look forward to the day, soon to come, upon confirmation we
24 hope today, that creditors will begin to receive their plan
25 distributions.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Pasquale.

3 Anyone else?

4 MR. SHORE: Good morning, Your Honor.

5 Chris Shore from White & Case, on behalf of the
6 Joint Official Liquidators of FTX DM as foreign
7 representatives of, in the FTX DM proceedings and FTX DM as a
8 creditor of the U.S. Debtors.

9 We also rise in support of this Chapter 11 plan,
10 which in our view, is a truly remarkable achievement by
11 Mr. Ray and his team of professionals, along with the various
12 directors on the joint board.

13 I'll also turn back in time. We were one of the
14 few parties that appeared at that first day hearing when
15 Mr. Bromley laid out his state of the estate PowerPoint. And
16 I'll be maybe more graphic than Mr. Dietderich, it was a
17 very, very dark presentation for creditors.

18 Despite Mr. Bromley's brave face, it was entirely
19 unclear what assets the Debtors had and whether they were
20 even safe with ongoing hacks occurring during that first day
21 hearing in real time. The best the Debtors could come up
22 with on an org chart, which is typically one of the first
23 slides in any first day presentation was a vague spaghetti of
24 silos, grouping diverse businesses into one synthetic Debtor
25 with a joint board.

1 There was no, virtually no management; most had
2 been kicked out, had already lawyered-up, and ultimately
3 would be convicted of their crimes and everybody in the
4 courtroom was worried about the possibility that the Debtors,
5 themselves, would be indicted. But have no fear, Mr. Bromley
6 deadpanned, it would all be sorted out once the corporate
7 records consisting of files of Slack messages, thumbs-up
8 emojis, furniture receipts, and Amazon QuickBooks printouts
9 were knitted together in the Debtors' schedule, and from our
10 perspective, there was a brewing first day dispute that
11 machinery referenced about what, if anything, was going to
12 proceed in this court versus the Bahamian Court. And if I
13 remember Mr. Bromley's remarks correctly, out of all the
14 uncertainty and chaos in the first days, the one thing the
15 Debtors were sure of was that DM had no assets, had no
16 operations, and that the Bahamian proceedings were
17 illegitimate.

18 We've come a very, very long way. We are here
19 today with a plan with overwhelming support that pays allowed
20 dollarized claims in full with interest. And for the JOLs,
21 an approved settlement distribution scheme that recognizes
22 the jurisdictional importance of both insolvency regimes and
23 allows for rapid, coordinated distributions to the customers
24 of the FTX Enterprise, whether they elected to have their
25 claims liquidated in the Bahamas or, here, in this court.

1 And for that reason, the JOLs, two of whom were
2 able to make it here today, wholeheartedly support entry of
3 the confirmation order and whatever ruling Your Honor may
4 render today, we extend all of our thanks to the Court and
5 its staff for all of its attention and good care to our
6 respected legal views, and most importantly, for creating an
7 environment in which global consensus could take root. So,
8 thank you, Your Honor.

9 THE COURT: Thank you, Mr. Shore.

10 Good morning.

11 MS. BRODERICK: Good morning, Your Honor.

12 May I please the Court? Erin Broderick of
13 Eversheds Sutherland on behalf of the Ad Hoc Committee of
14 Non-U.S. Customers of FTX.com.

15 The Ad Hoc Committee represents holders of
16 approximately \$6 billion in claims, spanning 34 countries,
17 with claim amounts as small as a couple hundred dollars to
18 hundreds of millions of dollars. The Ad Hoc Committee was
19 established in December of 2022 with an initial focus on
20 advancing customer property rights.

21 Those issues have been addressed at length by the
22 Debtors and other parties throughout these cases, but to
23 summarize briefly, the applicable legal standards, as well as
24 the factual realities of FTX prepetition operations,
25 including the misappropriation of customer assets, presents a

1 very difficult case and empiric victory at the end of the day
2 for customers on a "property of the estate" determination.

3 That said, however, the customers plain reading of
4 the terms of service and the reliance on assurances that
5 their assets will be safe and returned to them, has not been
6 dismissed or overlooked by anyone in this courtroom. Indeed,
7 that was the foundation of the Ad Hoc Committee's negotiation
8 with the Debtors, the Official Committee, and other parties
9 in the case and ultimately resulted in the plan before the
10 Court that has several creative mechanisms to enhance
11 customer recoveries within the confines of the Bankruptcy
12 Code and in balance with the interest and rights of other
13 stakeholders.

14 We're very proud of the role that the Ad Hoc
15 Committee played in developing the plan. We spearheaded the
16 customer preference settlement construct, which was critical
17 in providing certainty to allow customers to sell their
18 claims at the highest amount in the last year since the
19 settlement was announced.

20 We fiercely advocated for the 9 percent post-
21 petition interest rate implemented in the plan and the Ad Hoc
22 Committee's arguments and appeal to the equitable
23 prioritization of customer claims was central to the
24 subordination of governmental claims and creation of the CFT
25 Supplemental Remission Fund. These plan components represent

1 not only sound legal reasoning, but consensus that was built
2 on collaboration in ensuring that customers receive the best
3 treatment possible within the constraints of these cases.

4 Our presence has not been front and center in
5 these cases, but that is not reflective of disengagement;
6 rather, it's a testament to the extremely constructive and
7 cooperative relationship that we've had with the Debtors, the
8 Official Committee, the JOLs, and other parties in the case.

9 In short, the Debtors' second amended plan
10 represents culmination of almost two years of extremely hard
11 work, skilled balancing of competing interests, and
12 unwavering dedication to provide the best treatment possible
13 for creditors. The Ad Hoc Committee enthusiastically
14 supports confirmation of the plan and respectfully requests
15 that Your Honor enter the confirmation order. Thank you.

16 THE COURT: Thank you, Ms. Broderick.

17 MR. ENTWISTLE: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. ENTWISTLE: May I please the Court? Andrew
20 Entwistle, Entwistle & Cappucci, for the Class Action
21 Plaintiffs.

22 As Your Honor's aware, we filed the adversary
23 proceeding at the outset of this bankruptcy back in December
24 of 2022 on behalf of customers. And, at that time, as you've
25 heard today, or been reminded today, although, I don't know

1 that anyone can forget, the customers stood in a position
2 that was, indeed, dark. The likelihood of recovery by them
3 of anything on day one here was pretty bleak and we've worked
4 tirelessly with the Debtors throughout this proceeding to try
5 and resolve a number of issues that have led to the
6 recoveries that you've heard of here today and, obviously,
7 both sets of customers both, the FTX.com and the FTX U.S.
8 customers, have supported this plan, you know, in extremely
9 high numbers. Over almost 90 percent of the U.S. customers,
10 by vote; 97 percent by dollars. And 97 percent, I think, by
11 vote for the FTX dot -- or 95 percent for the FTX.com
12 customers and 97 percent, by dollars, have supported the
13 plan.

14 There's a good reason for that. The customers are
15 recovering 100 cents on the dollar, plus the other amounts
16 that are in the plan. But that doesn't come about in a
17 vacuum. As you've heard from Ms. Broderick and others, the
18 Committee, we worked together in many ways; at odds, in other
19 ways. There were -- we did extensive due diligence with the
20 Debtors on behalf of the customers. There were four days of
21 hard-fought negotiations in 2022, as Your Honor is aware,
22 that led to the plan agreement that resolved the property
23 issues.

24 We fought hard on behalf, particularly on behalf
25 of the U.S. creditors, who had slightly different property

1 claims because of the law in California that affected those
2 claims, as opposed to that for the FTX.com claims. Through
3 those negotiations, the result of which is the plan
4 supplemental agreement that takes the property settlement
5 into account.

6 None of that could have been accomplished without
7 the cooperation of the Committee, Mr. Ray, the Debtors, and
8 the Ad Hoc Committee as we worked through that process, which
9 was highly contentious at times, as you might imagine, in
10 order to get an equitable resolution for all customers, the
11 U.S. customers and the dot com customers.

12 And while I am aware that there are a couple of
13 customers out there that are still insisting on a property-
14 driven resolution by objection, that just wasn't possible
15 here. As Your Honor's aware, the law, even the best of the
16 cases that one might argue from the U.S. point of view, is
17 far from settled and would there have been, in our view, a
18 very difficult argument to have advanced before the Court
19 successfully, although, credible.

20 The law, as we've heard, with regard to the dot
21 com customers is even less-settled and more difficult. But
22 more importantly, as you've heard today, the Debtors didn't
23 have in-kind property to distribute to customers and we would
24 always have been fighting or always fighting for a solution
25 that would have helped through that process, recognizing that

1 bankruptcy law that applies to the claims here. But an in-
2 kind property solution just wasn't feasible or practical as
3 we went through the in-depth due diligence and worked with
4 the Debtors' professionals to evaluate that situation.

5 That's what led, ultimately, to the final
6 resolution that's before the Court on the property issues
7 and, as a result, the customer adversary Plaintiffs
8 wholeheartedly support the plan and we'd ask that Your Honor
9 approve it and the property settlement that's baked into it,
10 in order to, as the Committee noted, advance the process here
11 so that we can start to get these distributions back out to
12 customers.

13 We thank Your Honor and your staff for all of your
14 time. We've been before you on lots of different issues over
15 time, as you know, in trying to resolve some of the other
16 issues that are part of the adversary case; in particular,
17 the claims against some of the prior management of the
18 company. At least one piece of that, we've successfully
19 resolved with the Debtors against Ms. Ellison; that'll come
20 before your Court, before Your Honor in due course. Much of
21 the rest continues. We're also working with them, as you
22 know, on the negotiations with the DOJ, which hopefully, will
23 come to a great fruition for the estate, as well.

24 But thank you, Your Honor, and your staff, again,
25 for all your time and hard work in this case and, again, we

1 wholeheartedly support the plan. Thank you.

2 THE COURT: Thank you.

3 MR. MINTZ: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. MINTZ: Doug Mintz of Schulte Roth & Zabel, on
6 behalf of a group of preferred equity holders. Our group
7 filed an updated 2019 last night at Docket 23154.

8 Our clients are among the preferred equity holders
9 and preferred equity holders, like many of the folks in this
10 courtroom, are victims of all that came before the
11 bankruptcy. We are among several constituents that spent
12 time negotiating with the Debtors regarding treatment of the
13 preferred equity holders, particularly, as it pertains to the
14 Department of Justice's Remission Fund and Victims Fund.

15 The parties worked hard and fruitfully over the
16 last few months to reach the resolution that Mr. Dietderich
17 described earlier and filed a plan supplement agreement
18 documenting that on the docket at 25932. Each of our
19 constituents have signed onto that plan support agreement and
20 we support that settlement, which treats preferred as they
21 should be treated, as victims here, and look forward to
22 working with the Debtors to reach a resolution with the
23 Department of Justice on the treatment of the Remission Fund
24 going forward.

25 We thank the Court for its time. We thank Mr. Ray

1 and Mr. Dietderich for their hard work on this case and look
2 forward to further resolution. Thank you.

3 THE COURT: Okay. Thank you, Mr. Mintz.

4 Anyone else in support?

5 Okay. Mr. Dietderich?

6 MR. GLUECKSTEIN: Thank you, again, Your Honor.

7 Brian Glueckstein for the Debtors. So I --

8 THE COURT: I'm sorry, I called you
9 Mr. Dietderich. Sorry.

10 MR. GLUECKSTEIN: No problem.

11 We will proceed -- I will proceed at this point to
12 address the remaining objections, Your Honor, and we'll just
13 kind of move through them. I will group my remarks where
14 there is overlap to ensure that any objector who wants to
15 weigh in on the issue has an opportunity to.

16 Your Honor, the first, just starting in order, the
17 first objection to which, then there, are some joinders, all
18 on a *pro se* basis, filed by Mr. Nam and those supporting his
19 objection are really objecting to the valuation of the FTT
20 utility token. That is styled as a classification objection,
21 Your Honor.

22 These objectors want to receive value for claims
23 on account of FTT tokens. They wrongly argue that the
24 Court's final order entered in February 2024, after the
25 presentation of evidence and setting the value of claims

1 based on FTT at zero, should not be binding or somehow should
2 be revisited.

3 This is not permitted at this juncture, Your
4 Honor, and there is no basis, we submit, to do so. The
5 evidence presented at that time on the estimation hearing by
6 the Debtors' experts, explain that FTT has no fundamental
7 value because it has no utility outside of an operating
8 FTX.com Exchange. There is no and there will be no restarted
9 FTX.com Exchange. We now know that conclusively.

10 Based on the evidence presented at that time, the
11 Court held that FTT was valued appropriately at zero. No
12 evidence to the contrary was presented at that evidentiary
13 hearing and while it would not be permissible, none is
14 offered now. The Court's estimation order is binding and
15 cannot be collaterally attacked.

16 The evidence presented at the estimation hearing,
17 including that FTT had unique equity-like features, such as
18 token burn, voting, and governance rights, and the fact that
19 FTT derived its value from FTX's future cash flows, supported
20 the classification of FTT as an equity class in the plan. No
21 objector can point to any evidence, then or now, as to why
22 classification is wrong. Of course, given the claims have
23 been conclusively value to be worth zero, the classification
24 on the facts as they now exist with no restarted Exchange
25 makes it somewhat of an academic exercise.

1 We submit, Your Honor, that the plan appropriately
2 treats and classifies FTT and these objections should be
3 overruled.

4 THE COURT: Okay. Thank you.

5 Mr. Nam, I see you raised your hand on Zoom.

6 MR. NAM: Your Honor?

7 THE COURT: Yes, go ahead.

8 MR. NAM: This is Kihyuk Nam and my translator
9 (indiscernible). I would like just to speak, Your Honor.

10 Thank you for giving me the opportunity to speak.
11 My name is Kihyuk Nam and I have filed an objection against
12 the Debtors that unfairly treats FTT holders. I'm proceeding
13 with this objection on behalf of myself and my family. And
14 my family members are not familiar with English and legal
15 procedures. I have legally acquired their lot of claims and
16 represent them legally.

17 So, today, I stand here before you as a direct
18 victim affected by the Debtors' decisions. I reviewed the
19 estimation valuation with my family members and I even sent a
20 letter to Your Honor requesting reconsideration of the FTT
21 valuation.

22 Well before the reorganization plan was released
23 when we received the estimation motion, the Debtor cannot
24 clearly stated, We at FTX will restart operations, so we
25 hoped that the value of FTT might recover in one way or

1 another. Additionally, we noted that paragraph 7 of the
2 estimation order reserved rights regarding the classification
3 of FTT, so we waited until the situation became clear.

4 Subsequently, the plan to restart FTX was
5 abandoned and in the reorganization plan, FTT was valued at
6 zero dollars and classified in the lowest class, 17, making
7 the unfair treatment of FTT holders (indiscernible),
8 therefore, I proceeded to file objection to the current plan,
9 Your Honor.

10 In the Debtors' response to my objection, they
11 referred to paragraph 6 of the estimation order, stating that
12 classification of a claim is distinct from its value, stating
13 that and argued that I misread the reorganization order;
14 however, paragraph 7 of the estimation order begins with,
15 "Notwithstanding anything to the contrary in the motion or
16 this order," indicating that paragraph 7 takes precedence,
17 therefore, the scope of the reserved classification
18 (indiscernible) in paragraph 7, cannot be remedy by
19 paragraph 6.

20 Moreover, when interpreting the classification of
21 paragraph 7, FTT was valued at zero dollars because it was
22 classified as equity. Since the classification of FTT had a
23 decisive impact on its value, classification and its value
24 cannot be conceded separately.

25 According to the Exhibit 5 of the estimation

1 motion in Document 5203, the price of FTT at the time of
2 bankruptcy was \$2.69 and the asset liquidation discount rate
3 was only (indiscernible) point 13 percent. Even after
4 applying this discount rate, the value exceeded \$2.00, but a
5 100 percent FTT discount was applied, reducing its value to
6 zero dollars.

7 Moreover, according to 11 U.S.C. 502(j) of the
8 U.S. Bankruptcy Code, a claim that has been allowed or
9 disallowed may be reconsidered for just cause. This provides
10 the legal basis for reexamining the classification and
11 valuation of FTT, considering the change of circumstances and
12 the importance of fair treatment.

13 Your Honor, the Debtor processed with FTT at zero
14 dollars. I think that FTT lost its fundamental value due to
15 FTX's bankruptcy; however, cryptocurrencies, in general, they
16 have no intrinsic value and are priced based on market
17 sentiment. The Dogecoin and other (indiscernible) coins
18 avoid being valued at zero because they have intrinsic value,
19 applying a different standard only to FTT is not fair, in
20 fact, FTT is still actively traded, as you know, on various
21 ETRADE markets today and is trading as similar or something,
22 sometimes higher prices than at the time of bankruptcy.

23 Your Honor, (indiscernible) the Debtors claims
24 that FTT is a (indiscernible), but FTT is a utility token,
25 not an (indiscernible). The features which the Debtor

1 mentions are similar to securities, are general
2 characteristics of utility tokens and are unrelated to
3 ownership of (indiscernible).

4 Moreover, regardless of whether FTT is inactive,
5 it was trading as a discount asset on the FTX Exchange, so
6 general investors did not receive it as an equity. Based on
7 this perception, it's unfair that we receive no compensation
8 simply because we chose FTT. Even though we purchased Debtor
9 assets in the same manner as other investors just before the
10 bankruptcy.

11 Your Honor, last thing, circumstances have
12 significantly changed after the estimation order. FTX's
13 assets have substantially recovered and most victims are
14 expected to receive over 140 percent compensation based on
15 the petition date. I understand that the Debtor has even
16 decided to indemnify shareholders.

17 In this situation, is it truly fair to maintain
18 the general value only assigned to FTT? Your Honor, I
19 respectfully request your wise judgment so victims like us
20 may receive fair treatment.

21 Your Honor, thank you for giving me the time to
22 speak.

23 THE COURT: Thank you.

24 Mr. Dietderich -- Mr. Glueckstein -- I keep on
25 calling you Mr. Dietderich.

1 (Laughter)

2 MR. GLUECKSTEIN: We're obviously next to each
3 other and so sometimes we do get confused. It's no problem,
4 Your Honor.

5 Just a few things in response to Mr. Nam. Just so
6 that the record is clear on how the estimation order that
7 Your Honor entered and in relation these provisions relate,
8 paragraph 6 of the estimation order that's now a final order,
9 long ago, provides that the only circumstance in which the
10 valuation of the FTT token would be reconsidered would be if
11 the plan that was submitted to Your Honor for consideration
12 was modified, such that there was an operating exchange
13 utilizing FTT as a utility token following confirmation.

14 So we had discussions with certain objectors at
15 the time and the question was, well, we were still in
16 discussions about what might happen, what hypothetically
17 could happen with respect to a restart exchange or a post-
18 effective date exchange. In that circumstance, if we were to
19 modify our plan, because an exchange was going to be
20 restarted, then the question of value, based on the
21 characteristics of FTT might be different and there was a
22 reservation of rights to reopen that question.

23 In such circumstance, there's a separate provision
24 in paragraph 7 that talks about the classification and to
25 reserve rights of creditors to object to classification. As

1 I said in my opening remarks, if the value of the token is
2 not greater than zero, it doesn't have practical, real-world
3 effect in any event, but we do believe that for the reasons
4 why the estimation order was entered, based on the
5 evidentiary record at the time, that there's a basis for the
6 classification, with a good basis for classification as it
7 sets forth in the plan.

8 There were references to Section 502(j). To be to
9 be clear, there's no claims that have been disallowed here.
10 All that happened and through the estimation order is
11 valuation of the claims; that's what that estimation hearing
12 was about.

13 And I, respectfully, don't believe there's any
14 change in circumstances here, certainly, no motion has been
15 made to reopen that order, but there's certainly no change in
16 circumstances here in the perspective of the Debtors, as it
17 pertains to the FTT token.

18 And just finally, just so that there's no
19 confusion in the record, as Mr. Dietderich did address at the
20 outset of the hearing this morning, the Debtor has not made
21 any decision and the Debtor is not forecasting any
22 distributions to shareholders on account of their interests
23 in these bankruptcy cases. The issue with respect to the DOJ
24 is separate and deals with assets that are outside the
25 estate.

1 So for all those reasons, Your Honor, we would
2 submit that the Court's order, with respect to the valuation
3 of FTT is long ago, final, and that the classification, as to
4 the nature of those claims in our plan is appropriate.

5 THE COURT: Okay. Thank you.

6 All right. On this objection, I am going to
7 overrule the objection. I did hold an estimation hearing in
8 which I determined the value of FTT tokens at zero, based on
9 the evidence that was submitted to me.

10 There was no contrary evidence submitted at that
11 time and I have no evidence today that the value of FTT
12 tokens would be anything other than zero. So, and FTT tokens
13 were inextricably intertwined with the Debtors; it was a
14 token traded by the Debtors and since the Debtor is not re-
15 establishing an exchange, there simply is no basis upon which
16 the FTT tokens could increase in value or create some value
17 now or in the future. So for those reasons, I will overrule
18 the objection.

19 MR. GLUECKSTEIN: Thank you, Your Honor.

20 The next objection that I will address is the
21 objection that was filed by the Celsius plan administrator.
22 The Celsius --

23 THE COURT: Before we do Celsius, we've been going
24 for an hour and a half, why don't we --

25 MR. GLUECKSTEIN: Sure.

1 THE COURT: -- take a 10-minute recess.

2 MR. GLUECKSTEIN: Absolutely.

3 THE COURT: And we'll come back, let's come back
4 at a quarter of.

5 MR. GLUECKSTEIN: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (Recess taken at 11:36 a.m.)

8 (Proceedings resumed at 11:45 a.m.)

9 THE CLERK: All rise. In.

10 THE COURT: Thank you, everyone.

11 Mr. Glueckstein?

12 MR. GLUECKSTEIN: Thank you, Your Honor.

13 It's still morning, so good morning. Brian
14 Glueckstein for the Debtors.

15 Your Honor, moving to our next objection that
16 remains outstanding, that is the objection of the Celsius
17 plan administrator. That objection, Your Honor, relates to
18 the Debtors' pending claim objection that is *sub judice* with
19 the Court, addressing Celsius', as we submit, time-barred
20 attempt to assert subsequent transferee claims under
21 Section 550 of the Bankruptcy Code, related to 497 different
22 Celsius customers, who are alleged to have transferred assets
23 to the accounts of the FTX Exchanges.

24 Of course, if the Debtors' claim objection is
25 ultimately sustained, all of these other issues become moot.

1 But with respect to the objection today, Your Honor, the
2 first objection that the plan administrator interposes is a
3 classification objection under Section 1122. And on its
4 merits, the plan objection, we submit, fails.

5 Celsius argues that the Debtors must modify the
6 definition of customer entitlement claims to include its
7 subsequent transferee claims asserted under Section 550 of
8 the Bankruptcy Code, which Celsius, itself, acknowledges or
9 asserted against the Debtors.

10 Celsius is not a customer. It has no rights of
11 its own to participate in the customer priority settlement
12 that we discussed at length this morning, or receive the
13 benefits that were negotiated and are provided to the
14 Debtors' customers holding claims to compensate holders for
15 value of assets held in account on the FTX Exchanges.

16 The subsequent transferee liability that Celsius
17 seeks to establish would result from a judgment against the
18 Debtors and for which the Debtors would be responsible,
19 ultimately, for satisfying. While that would present some
20 issues for the Debtors in terms of allowance of any related
21 customer entitlement claims, that liability would simply be a
22 general unsecured claim, owing from the Debtors to Celsius,
23 and is properly classified as such; in fact, as we sit here
24 today, there remains significant uncertainty, whether any or
25 all of the subsequent transferee claims actually correspond

1 to customer liabilities of the Debtors, as of the petition
2 date in the same or lesser amounts or in any amount at all.

3 Celsius is not challenging how the plan generally
4 distinguishes between customer entitlement claims and general
5 unsecured claims, with customer entitlement claims separately
6 classified to provide the benefits of the customer priority
7 settlement detailed in the plan.

8 As we discussed in our papers, in our reply
9 papers, Celsius itself adopted a similar distinction in its
10 own bankruptcy plan, distinguishing between claims held by
11 customers in Celsius accounts from all other unsecured
12 claims, which would include subsequent transferee claims.

13 The Debtors' classification of claims satisfies
14 Section 1122(a) of the Bankruptcy Code on the facts of these
15 cases. If Celsius is permitted to pursue its claims, it
16 would be pursuing those claims against the Debtor and those
17 are properly classified as general unsecured claims.

18 Celsius next argues that the Debtors must somehow
19 commit now, that it will not make any distributions to its
20 own creditors until both, Celsius' subsequent transferee
21 claims against the Debtors and the initial transferee claims
22 Celsius says it has asserted in New York are resolved. There
23 is no basis whatsoever to require such a result; never mind,
24 legislated in our plan.

25 What Celsius is trying to do without saying it, is

1 obtain prejudgment garnishment as to the distributions that
2 would be owed to FTX Exchange customers with allowed claims
3 on the basis of Celsius purporting to have claims against
4 those customers.

5 Settled law provides that prejudgment garnishment
6 is generally not available against a Debtor because it unduly
7 burdens and complicates the administration of the estate.

8 And here, Your Honor, Celsius has not even made a
9 proper request for such relief for the Court to consider.
10 Their fallback position seems to be that the Debtors must
11 establish some specific reserve for their time-barred
12 subsequent transferee claims now at the plan confirmation
13 stage and we submit that is not correct. No change to the
14 definition of disputed claims, as they suggest, is required.

15 To the extent the Court permits Celsius to assert
16 their subsequent transferee claims and/or their preference
17 claim against the coined Debtor, the Debtors will need to
18 consider those claims in considering and establishing their
19 disputed claims reserve, as contemplated by the plan. But
20 there's no requirement for some special reserve for Celsius
21 and certainly no reserve is needed prior to the effectiveness
22 of the plan or the Court's ruling on the pending claims
23 objection.

24 On the disputed claims reserve issue, Your Honor,
25 which was also the focus of the Three Arrows Capital

1 objection, which we have now resolved, we believe the Debtors
2 have satisfied Section 1123(a)(4) by providing for a disputed
3 claims reserve in Section 8.5 of the plan and that nothing
4 more is required in the plan itself.

5 But as we explained in our papers, Your Honor, the
6 reality is, the establishment and size of the disputed claims
7 reserve contemplated by the plan in this case will be the
8 subject of a separate motion that the Debtors intend to file
9 with this Court and everyone's rights, including Celsius,
10 Three Arrows, and anyone else, are fully reserved with
11 respect to that motion and it's ultimately the size of the
12 disputed claims reserve that will be proposed.

13 We have added language, Your Honor, in new
14 paragraph 168 of the confirmation order in the version of the
15 order filed this morning, making this point clear and it was
16 that language that resolved the 3AC objection on this basis.
17 Certainly, that language, to the extent Celsius is continuing
18 to push the reserve issue at this time, should cover, more
19 than cover that issue as well.

20 But nonetheless, Your Honor, we, for all of those
21 reasons and those set forth in our papers, we submit that the
22 Celsius objection should be overruled. Thank you.

23 MR. LEVY: Good morning, Your Honor. Richard Levy
24 of Pryor Cashman, on behalf of the Celsius litigation
25 administrator.

1 As when I was before you last time, Your Honor,
2 I'm going to refer to Celsius and the Celsius litigation
3 administrator as "Celsius"; I think it'll be easier for the
4 record.

5 Your Honor, I want to make clear at the outset
6 that we are not arguing that the plan should fail; we are
7 arguing that there is a defect in the plan that should be
8 addressed. And to resolve that defect, we've suggested
9 several means in our responsive papers. I'll get into that
10 in a little bit.

11 I'm going to suggest that there's yet another
12 basis that you'll see from the argument, Your Honor, that can
13 resolve this issue. Not only are we misclassified and should
14 be otherwise classified, we could be separately classified.
15 Let's talk about this as we go through the argument.

16 I want to approach this from a dual perspective,
17 Your Honor. The customer entitlement claims are in
18 Classes 5(a) and 5(b). The general unsecured claims in which
19 the Debtors propose to classify us are in Class 6. If our
20 claims are more in the nature of customer claims, directly or
21 indirectly, they should be in Class 5; perhaps, in their own
22 subclass of Class 5. But given their nature, they surely
23 don't belong in Class 6.

24 Your Honor, we although that Section 1122 requires
25 that the plan provide for classification and equal treatment

1 of the members of each of those classes. That requires that
2 substantially different claims can't be placed in the same
3 class and must be placed in a class with other claims of
4 similar nature or, perhaps, in a separate class.

5 The essential issue is not the person who holds
6 the claim, but it's the legal character of the claim as it
7 relates to the assets of the Debtor, and that's the Grace
8 case in Third Circuit 2012 -- '13 -- and in other cases.

9 The customer entitlement claims are based on
10 persons; persons who had an account with FTX. That's the
11 only element that results in their classification in Class 5.
12 It says nothing, Class 5 said nothing -- says nothing about
13 any other means in which a claimant could have a connection
14 to or a claim against FTX based on a relationship to the
15 account, and that's what we are urging in our complaint,
16 proposed complaint, which underlies our proof of claim, that
17 we, in fact, have a relationship to that account.

18 It was Celsius property that was preferentially
19 transferred to holders of claims now in FTX to fund or to
20 increase the funding of their account at FTX.

21 THE COURT: Well, let me ask you about that.

22 What's the basis for your argument that the funds
23 that were transferred from customers who withdrew their funds
24 from the Earn accounts prior to the petition date at Celsius,
25 what's the basis for Celsius to having any property interest

1 in those funds?

2 MR. LEVY: In the Earn accounts, Your Honor, Judge
3 Glenn has concluded that that was property of the Celsius
4 estate.

5 THE COURT: No, what he concluded was that funds
6 that were in the accounts as of the petition date were
7 property of the Debtors' estate. He said nothing about funds
8 that had been withdrawn prepetition.

9 MR. LEVY: Well, Your Honor, that's something we
10 may have to deal with going forward.

11 THE COURT: You're definitely going to have to
12 deal with it going forward.

13 MR. LEVY: It seems to me if it's in the account
14 at the petition date, it's the same principal, previously.

15 THE COURT: Well, what's the basis for that?

16 MR. LEVY: Because --

17 THE COURT: Give me a basis. Give me something to
18 hang my hat on that says that you can assert a property right
19 over funds that were withdrawn from the Celsius Earn accounts
20 by the customers.

21 MR. LEVY: Your Honor, I would argue that those
22 were Celsius funds even before the petition date for the same
23 reasons that Judge Glenn concluded that they were Celsius
24 property. The nature of the --

25 THE COURT: But not once they're withdrawn. Once

1 the customer withdraws the funds --

2 MR. LEVY: Pardon me, Your Honor?

3 THE COURT: Once the customer withdraws the funds
4 from the account, they revert back to the customer's
5 property.

6 How could, prepetition, how could Celsius have
7 said to a customer who withdrew their funds: That money is
8 ours. We still have a property interest in those funds.

9 Explain that to me.

10 MR. LEVY: I'm going to say, Judge, that based on
11 Judge Glenn's reasoning, it's the same reasoning that would
12 apply to prior transfers out from Celsius. The account funds
13 were never the property of the customer; they were property
14 of Celsius under the account documents and contract.

15 THE COURT: They had bare legal title.

16 MR. LEVY: Pardon me?

17 THE COURT: They had bare legal title; the
18 customer still had an interest in those funds and they had
19 the right to withdraw them under their terms of service.

20 MR. LEVY: It's still Celsius' property, as the
21 Earn ruling says.

22 THE COURT: So if someone who withdrew their funds
23 from the Celsius account two years ago, two years before they
24 filed for bankruptcy, Celsius could go to that customer and
25 say, Hey, by the way, that's our property and we want it

1 back?

2 MR. LEVY: I suppose that's a possibility.

3 THE COURT: I don't think so. I don't think so.

4 (Laughter)

5 THE COURT: Go ahead.

6 MR. LEVY: So, Your Honor, our theory, as we've
7 just discussed, is that there's a property interest in the
8 settlement, in the Celsius case -- in the Celsius estate that
9 tracks through to the customers at FTX. They funded their
10 account using property in which Celsius had a property
11 interest. They're going to receive a distribution.

12 Celsius has a claim that is based on the fact that
13 that account at FTX was funded with property in which Celsius
14 asserts a property interest and if upheld under Section 551,
15 that attribute remains at Celsius. And we would have an
16 entitlement to be treated, in effect, as a customer.

17 We have a claim. We have an indirect link. I'll
18 agree, it's indirect at the moment, but indirect and direct
19 doesn't necessarily answer the question.

20 Also from the Grace case, Your Honor, in the 2013
21 decision by the Third Circuit, the question in that case was
22 whether indirect asbestos claimants who had claims for
23 indemnity and contribution were properly classified in the
24 same class as direct asbestos claims.

25 THE COURT: What did you, when you filed your

1 proofs of claim, which proof-of-claim form did you use?

2 MR. LEVY: Pardon me, Your Honor?

3 THE COURT: Which proof-of-claim form did you use
4 when you filed your claims against the Debtors?

5 MR. LEVY: We used the custom. We used the class,
6 the general unsecured claim, because that's all we could.

7 We were not a person who held an account. There's
8 no question about that. But we're claiming that we have an
9 interest relating to that account.

10 And the point that's made in the Third Circuit
11 case in Grace is that indirect and direct claims relating to
12 asbestos liabilities were properly classified in the same
13 class and that there was no basis for carve the indirect out.
14 The key language in that case, Your Honor, I'll find it in a
15 moment.

16 (Pause)

17 THE COURT: Well, while you're doing that --

18 MR. LEVY: Pardon me?

19 THE COURT: While you're doing that, I'd like to
20 know the answer to the question of, what evidence have you
21 introduced to me today?

22 MR. LEVY: What happens?

23 THE COURT: What evidence have you introduced in
24 this hearing today that would lead me to conclude that
25 Celsius has an interest as a customer in the FTX accounts?

1 MR. LEVY: Your Honor, we have a filed proof of
2 claim, which includes the basis of our argument, and we've
3 explained that as a matter of what we rest our position on.
4 I don't think there's any dispute about that.

5 Your Honor, the Third Circuit says, "Both direct
6 and indirect claims under the asbestos plan exhibit a similar
7 effect on Grace's bankruptcy, they seek recovery for actions
8 related to Grace's asbestos liability."

9 By analogy, we seek recovery based on FTX's
10 liability relating to the existence of a customer account.

11 The Third Circuit goes on and says, although
12 Montana and the Crown (ph) must first -- those were the
13 indirect claimants -- must first be held liable for failure
14 to warn before they can bring such a claim, that makes no
15 difference to Grace, the debtor, as its liability for such a
16 claim depends solely on asbestos-related activities.

17 Same argument, by analogy, here. FTX's liability
18 depends upon an account; not a person holding an account, an
19 account. And our money, as we assert in our complaint, finds
20 its way into FTX to fund or increase the funding of an
21 account for which we will now be able to claim, should we win
22 in the avoidance proceeding, that that creates liability for
23 a subsequent transfer.

24 Your Honor, the point that is concluded in the
25 Grace case is that a reasonable classification of

1 indemnification and contribution, together with direct
2 asbestos personal injury claims, those were all properly
3 classified, and that's what we're asserting should happen
4 here, Your Honor. Classification cannot be used to place
5 claims of substantially different character in the same
6 class. I'm arguing, Your Honor, that our claims are not
7 substantially different because they arise from the account
8 relationship, the account existence, and not from the person
9 who holds the account.

10 (Pause)

11 MR. LEVY: Forgive me, Your Honor, I'm trying to
12 skip down so I don't have to repeat myself.

13 Your Honor, to honor the purpose and meaning of
14 classification, it seems to me that the approaches that we've
15 suggested to the debtor are proper. One, include us in Class
16 5, but, two, we shouldn't be in Class 6. Our claims are
17 significantly different from any other creditor in Class 6,
18 to my knowledge. Now, I have not looked at the thousands of
19 claims, but I doubt that anybody else is asserting a claim
20 based on liability through an account. For that reason,
21 Judge, we don't belong in Class 6. We belong perhaps in our
22 own class under Class 5.

23 So, Your Honor, I think I've explained the basic
24 theory here that the attributes of the claim are what should
25 govern classification and the attributes of the claim here

1 require that we be classified along with the customers so
2 that we are properly treated under the plan.

3 Let me turn to Mr. Glueckstein's comments and a
4 couple of other points that come up along the way. As we
5 pointed out at the hearing on September 12th, Judge, one of
6 the big issues that arises from what we are talking about
7 here is the risk of potential dual exposure to the FTX
8 estate. They may make distributions to customers and they
9 have a year to object to those customers under their Earn
10 plan. So maybe they're going to do something that will delay
11 things and in fact that would be one procedural mechanism
12 that would work. We've got a claim, the customers have a
13 claim, put it all in front of one proceeding instead of
14 having the risk of dual exposure to the estate, which I can't
15 imagine any judge or any debtor would want to face.

16 Mr. Glueckstein says that we're trying to seek
17 prejudgment garnishment. I think Your Honor recognizes what
18 garnishment is as opposed to what we're asking, which is in
19 effect a holdback or a reserve. We are not seeking the
20 imposition of a property interest against the debtors'
21 property or against the potential distributions to be made.
22 So we are not seeking garnishment at all or attachment.

23 You know, Your Honor, the cases that the debtor
24 relies on for this Chapter 7 case is they're not Chapter 13
25 cases. They've said in their opposition to us, Your Honor,

1 in their response that we are a creditor of a creditor and we
2 don't have any standing to be heard. I dispute that, Your
3 Honor. We have a claim under Section 101.5 of the Bankruptcy
4 Code. We have a right to payment, direct or indirect, that
5 makes us a creditor. We're not dependent on the rights of
6 the -- we are not -- we have a claim, it will require certain
7 facts and circumstances to progress to further proceedings,
8 but we have a claim. We are not a creditor of a creditor; we
9 are ultimately a creditor of FTX.

10 I think, Your Honor, that that's all I need to
11 say, unless Your Honor has further questions.

12 THE COURT: No questions. Thank you.

13 MR. LEVY: Thank you, Your Honor.

14 MR. GLUECKSTEIN: Thank you, Your Honor, just a
15 few points in response. Maybe I'll take them in reverse
16 order.

17 On this last point, as Your Honor knows, the
18 debtors don't believe they have a claim against the debtors,
19 they believe -- we believe those claims are time-barred, and
20 we reiterated that point in our papers. Obviously, if Your
21 Honor were to agree and sustain the claims objection that is
22 pending and rule that their claims cannot be brought against
23 the debtors in subsequent transferee claims, the only claim
24 they have vis-a-vis the debtor would be against the initial
25 transferee.

1 This issue of they're just trying to have us
2 reserve so that we don't pay out on the claim twice, we will
3 -- if their claims are allowed to proceed, we will have to
4 address that issue, Your Honor. Obviously, the debtors have
5 no intention of making payments out at times when we have
6 issues that need to be resolved, but the suggestion that
7 Celsius can come in and say, well, you can't make any
8 distributions to creditors if the debtors determine those are
9 allowed claims, there's no basis for Celsius to say we can't
10 pay those claims.

11 And so, okay, the reserve issue, I understand the
12 reserve issue, we'll have to deal with a reserve if their
13 claims are allowed to proceed in one way or another, it
14 doesn't mean we believe we need to reserve on those claims
15 separately or in their entirety, but we'll deal with that
16 issue when we come to it. But what they're asking is not
17 about a reserve, what they're asking, and we just heard it
18 again, is that somehow the debtor should be forced to hold
19 distributions until they reserve whatever litigation claims
20 they have in their court in New York. There's no basis, none
21 has been cited to Your Honor to force the debtors to do that
22 at this stage.

23 Now, with respect to this argument that we've now
24 heard -- this is the most we've heard elaborated on it --
25 that somehow -- the argument now is that Celsius has an

1 actual property interest in the funds that were deposit --
2 allegedly deposited by their customers, who withdrew those
3 funds from the Celsius exchange from their account. The
4 allegation is they deposited the money into an FTX account,
5 and now what they're arguing is that they had some property
6 interest in those funds at the time they were deposited.
7 And, as Your Honor correctly points out, there's no basis for
8 that whatsoever. There's been no evidence put on about that,
9 there's been nothing cited to that would lead to that result.

10 And why are they doing this? They're doing this
11 because they want to be classified as a customer claim. In
12 the event that their claims are allowed to proceed against
13 the debtor under Section 550 of the Bankruptcy Code, they
14 want the benefits of the customer priority settlement. They
15 are not a customer. Whatever funds were deposited, to the
16 extent funds were deposited into the FTX exchange accounts by
17 the Celsius customers, those funds, like all other customer
18 deposits, were comingled with the debtors' assets and with
19 other customer assets and there are no property rights. That
20 has now been conclusively determined by the evidence before
21 Your Honor today from Mr. Mosley and from Lord Neuberger.

22 So what they're trying to do is say, okay, but
23 wait a minute, we have this idea that we have a property
24 right that we're going to collect on through the customer who
25 deposited that money in the FTX exchange, there's no basis

1 for that whatsoever. What it really sounded like they were
2 saying this morning is they have some kind of turnover action
3 or they want their funds back, and that's not what they've
4 done.

5 They have brought -- what they are seeking to
6 file, what they filed in their late proof of claim and what
7 they have sought to file in their draft complaint against the
8 debtors is a subsequent transferee liability claim against
9 the debtors pursuant to Section 550 of the Bankruptcy Code,
10 and there is no question, we deal with this in our papers,
11 that if that liability is established, that is a liability
12 that the debtors will have to deal with, that is a general
13 unsecured claim. What they are not in any way, shape, or
14 form -- and we just heard it, Celsius admits they're not a
15 customer, they were not a customer of the exchange -- they
16 want to rely on this language that there was a relationship
17 to the account and that somehow their subsequent transferee
18 claim must be classified with the creditors -- with the
19 customers.

20 We submit, Your Honor, that the facts of this case
21 and the facts of this plan are clear: The reason why the
22 customers are separately classified from the general
23 unsecured creditors is a result of the nature of the claims
24 that they have and the benefits that are being provided to
25 the customers as a result of the negotiated customer priority

1 settlement. There is nothing about any of that that touches
2 on Celsius' subsequent transferee claims against the debtors.
3 And to the extent that they want to establish liability in
4 the Southern District of New York against the initial
5 transferees -- and we talked about this at the hearing last
6 month -- and they think they can come here and have some
7 theory to have the debtors -- somehow collect against the
8 debtors on that judgment, they can try to do that; we don't
9 think that will work, but they could try to do that. But
10 what they cannot do is elevate their claim and elevate their
11 standing into the shoes of the customer. They're not the
12 customer.

13 And so the classification for purposes of a plan
14 today, we submit, Your Honor, is correct. Any issues with
15 respect to a disputed claims reserve have now been made clear
16 that we're going to be addressing those in terms of the
17 amount of that reserve in the aggregate with Your Honor
18 separately, and there is no basis whatsoever to force the
19 debtors to have Celsius, the Celsius administrator legislate
20 how the debtors are going to address their claims
21 reconciliation process.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 All right, I am going to overrule this objection
25 as well.

1 First of all, let me say I had hoped that I would
2 be in a position to have issued a ruling on the question of
3 whether or not Celsius' proof of claim was timely filed, but
4 I will do so as soon as possible in the future. But as for
5 purposes of today, to reclassify them under 1122 because they
6 assert that they have a property interest in the accounts of
7 certain FTX customers, I simply have no evidence to support
8 that. The proof of claim that was filed is not sufficient,
9 it only gives me the bare facts that customers of Celsius,
10 prior to the filing of the Celsius bankruptcy, withdrew funds
11 from their Earn accounts and deposited them into the FTX
12 accounts. That's the only allegation that's in there, and
13 it's only an allegation, it's not any evidence.

14 So I have no basis to conclude that Celsius has
15 any interest whatsoever in any FTX customer account and, for
16 that reason, their classification under 1122 is correct.
17 They are a noncustomer general unsecured creditor of the
18 estate for purposes of the plan.

19 Debtors -- or the argument that the debtors must
20 not release funds to these FTX customers in connection with
21 distributions under the plan, the objection fails for the
22 same reason. I have no basis to conclude at this point that
23 Celsius has any property interest whatsoever in those
24 customers' accounts. The only thing Judge Glenn said in his
25 opinion in Celsius was that funds that were in the accounts

1 as of the petition date became property of the debtors'
2 estate. He did not address the question of what happened
3 prior -- funds that were withdrawn prior to the petition date
4 of the Celsius case and, therefore, it has no impact on my
5 ability to say FTX customers should not get paid when the
6 distributions are made.

7 So, for those reasons, I will overrule the
8 objection, and we'll deal with the question about whether the
9 Celsius proof of claim is valid in the near future.

10 MR. GLUECKSTEIN: Thank you very much, Your Honor.

11 So continuing forward with the remaining
12 objections, I plan to next address the remaining piece of the
13 objection filed by the Office of the United States Trustee.
14 The one issue that remains unresolved -- and I would like to
15 note, and we appreciate the engagement and we worked very
16 constructively with the Office of the United States Trustee
17 to resolve all but one issue in their objection based on the
18 revised -- the revisions to the plan and the revised
19 confirmation order. The one issue that we have not resolved
20 that remains open is their challenge to the consensual third
21 party releases contained in Section 10.4 of the plan and the
22 corresponding injunction in Section 10.8. This releases
23 issue was also raised in the Kavuri parties' objection as
24 well.

25 Your Honor, the argument being made is that the

1 opt-out release structure approved by this Court to obtain
2 consensual releases from the holders of claims is not
3 permissible. Importantly, Your Honor, nobody is challenging
4 the scope of the releases being inappropriate, nobody is
5 challenging who is being released as inappropriate. In fact,
6 the third party releases in this case are extraordinarily
7 narrow.

8 First, the releases do not release any causes of
9 action arising out of conduct that occurred prepetition, or
10 claims otherwise preserved for the wind-down trust, and are
11 limited to address plan formation and the business of these
12 Chapter 11 cases. The releases also have carveouts for
13 fraud, gross negligence, and willful misconduct.

14 Second, the releases do not include a release for
15 any insider or employees of the debtors before Mr. Ray and
16 his team took over, an overlap with those covered by
17 exculpation in many respects. There are, however, certain
18 parties benefitting from the releases who were integral to
19 the plan formation process, namely the ad hoc committee and
20 the joint liquidators of FTX Digital Markets. Thus, the opt-
21 out releases in this case are narrowly tailored to the unique
22 facts and circumstances presented.

23 The debtors also provided, after discussions in
24 connection with the disclosure statement, with the United
25 States Trustee at that time in connection with approval of

1 the solicitation procedures, that releases are deemed --
2 releases for classes who are deemed to reject the plan
3 required opt-in releases, and so opt-in releases were
4 solicited for those classes as part of our process.

5 The voluntary release here is an important, albeit
6 limited, part of the plan. The releases here, we submit, are
7 thus quite distinguishable from the general releases provided
8 in many plans. Nonetheless, the objection asserts that the
9 releases are not consensual because they contain an opt-out
10 structure. We submit this is wrong both before and after the
11 U.S. Supreme Court's decision in Purdue.

12 The U.S. Trustee's Office has for a long time
13 advocated against opt-out releases. This is not an issue
14 arising from the Purdue decision. But as the U.S. Trustee
15 acknowledges, prior to Purdue, Your Honor, along with many
16 other courts in this district have consistently held that
17 voluntary opt-out releases are consensual or can be
18 consensual on the right facts and are thus permissible. This
19 Court is well aware of the reasoning on which those cases are
20 based that consent to the release can be inferred by failing
21 to opt out of the releases through a ballot election.

22 Notice is a very important component to those
23 decisions where creditors have an opportunity to opt out or
24 otherwise express their views on the proposed release. On
25 the facts here, it is hard to imagine more notice having been

1 provided to creditors. This case is one of highest profile
2 cases in history, it is regularly reported on in publications
3 around the world. The debtors sent ballots with opt-out
4 materials to almost one million creditors in the voting
5 classes. Those were accompanied by clear and thorough
6 materials explaining the releases and the opt-out process
7 that were approved by this Court. In addition, the debtors
8 published notice of the releases and the need to opt out of
9 it if a creditor in the voting class did not want to grant
10 the releases in national and international publications,
11 including the New York Times and CoinDesk.com.

12 The debtors submit this robust notice is akin to
13 the type of noticing provided in class action cases pursuant
14 to Rule 23 of the Federal Rules of Civil Procedure, which
15 indisputably use and are permitted to use opt-out noticing.

16 The argument that somehow the Purdue decision up-
17 ended the ability for this Court to approve on appropriate
18 facts opt-out releases is baseless. The Supreme Court's
19 decision in Purdue itself expressly cautioned that nothing in
20 the decision, "should be construed to call into question
21 consensual third party releases," and later stated, "or
22 express a view as to what qualifies as a consensual release."

23 Thus, if this Court were to believe that the
24 debtors' opt-out releases are consensual on the facts of this
25 case, then nothing in Purdue dictates a different result.

1 Courts in this circuit and elsewhere have recognized this
2 fact and have since the Purdue decision confirmed plans
3 containing opt-out structures for third party releases,
4 including in the Invitae case, BowFlex, and Robertshaw, all
5 of which are discussed in detail in our reply papers. In the
6 Robertshaw case, Judge Lopez in the Southern District of
7 Texas noted that Purdue did not change the law on consensual
8 opt-out releases.

9 Your Honor, the U.S. Trustee and the Kavuri
10 parties each cite to the In re Chassix Holdings decision from
11 2015 for the proposition that opt-out releases are not
12 permitted, but that decision, which of course is not binding
13 on Your Honor, has been thoroughly considered by this Court
14 in the past when confirming plans containing opt-out
15 releases, and that case notes that the circumstances could
16 justify different outcomes on particular facts and
17 circumstances. And we do submit that the facts of this case
18 support the very limited releases that are contained in this
19 plan.

20 Finally, Your Honor, we do discuss in our reply
21 brief and note we are of course aware that Judge Goldblatt
22 recently issued a decision in the In re Smallhold case
23 expressing a view that creditors need to take affirmative
24 steps to indicate consent following Purdue. That decision,
25 which of course is not directly binding on the Court, we do

1 believe is inconsistent with Purdue and, critically,
2 distinguishable on its facts.

3 Here, as noted, notice was widely sent via both
4 direct and publication notice, featuring the releases in the
5 highest profile pending Chapter 11 case. And the releases,
6 as discussed, are very limited.

7 I also note that Judge Goldblatt in his opinion
8 did not expressly rule on opt-outs for those who did receive
9 ballots but did not return them, and also noted that, if the
10 protections of Rule 23 class actions were provided, the
11 results might be different.

12 We submit, Your Honor, all things considered,
13 given the limited scope of the releases here, the facts and
14 circumstances of this case, the noticing that was provided to
15 creditors, that the releases in the debtors' plan here are
16 reasonable, consensual, and should be approved.

17 THE COURT: Thank you.

18 MR. GLUECKSTEIN: Thank you.

19 MR. HACKMAN: Good afternoon, Your Honor.

20 THE COURT: Good afternoon.

21 MR. HACKMAN: May it please the Court, Ben Hackman
22 for the U.S. Trustee.

23 Our office filed a confirmation objection at
24 Docket Item 23610 and our objection raised --

25 THE COURT: You might need to speak up a little

1 for the folks in the back.

2 MR. HACKMAN: I'm sorry, Your Honor. Our office
3 filed a confirmation objection at Docket Item 23610 and our
4 objection raised ten issues with confirmation. We have
5 resolved nine of those issues, and we thank debtors' counsel
6 for working with us. Our only open issue is, does the plan
7 contain nonconsensual third party releases, and we
8 respectfully submit the answer is yes.

9 Our position is that third party releases that are
10 based on inaction such as a failure to opt-out are
11 nonconsensual, and third party releases that are
12 nonconsensual are foreclosed after the Supreme Court's ruling
13 in Purdue.

14 The second amended plan filed at Docket Item 26029
15 defines releasing parties to include creditors who are
16 unimpaired, creditors who are eligible to vote, but do not
17 return a ballot, and people who vote to accept or reject, but
18 do not opt out. And that's in Article 2.1.172. Our position
19 is that contract principles govern whether a release is
20 nonconsensual and that, under contract law, silence does not
21 equal consent except in limited circumstances not applicable
22 here.

23 As the Restatement Second of Contracts states in
24 Section 69, comment (c), the mere fact that an offeror states
25 that silence will constitute acceptance does not deprive the

1 offeree of his privilege to remain silent without accepting.
2 Here, people who are unimpaired, in unimpaired classes, are
3 not being asked to vote, their silence or inaction should not
4 equal consent to a third party release.

5 As the Bankruptcy Court for the Southern District
6 of New York wrote in the Chassix decision, it is difficult to
7 understand how a creditor can be unimpaired if it is
8 releasing its claims against third parties. We submit that
9 the only way for creditors in unimpaired classes to consent
10 to the FTX plan's third party release is by opting into them.
11 The same thing goes for people who are eligible to vote, but
12 do not return a ballot.

13 The debtors' customer base in this case, as I
14 understand it, is spread out all over the world. The
15 presentation the debtors made at the first day hearing, which
16 is filed at Docket Item 115, indicates that customers were
17 located in more than 24 countries, including 22 percent in
18 the Cayman Islands, 11 percent in the Virgin Islands, eight
19 percent in China, eight percent Great Britain, six percent
20 Singapore, five percent Bermuda, four percent Korea, four
21 percent the United Arab Emirates, and so on. We're not sure
22 how many of the customer base, how many people in the
23 customer bases read and write English, or how many of them
24 are familiar with the U.S. legal system generally or the U.S.
25 bankruptcy system in particular. I believe Mr. Daloia during

1 his testimony today indicated that he would not have a way to
2 tell if anyone, any particular person received a solicitation
3 package. We submit that consent should not be inferred based
4 on a creditor or customer's inaction.

5 We recognize that this plan's third party releases
6 are limited, they do not extend to conduct that occurred
7 prepetition, as I read the document, they do not apply to
8 gross negligence, willful misconduct, fraud, or criminal
9 acts. It seems to us that the third party releases largely
10 overlap with the plan's exculpation. Having said that, we
11 agree with Judge Goldblatt's observation in the Smallhold
12 decision, which Mr. Glueckstein referenced, that
13 nonconsensual third party -- the nonconsensual third party
14 release is now per se unlawful. And if a third party release
15 is nonconsensual, then no matter how narrow it is, it should
16 not be approved.

17 The debtors' reply in support of confirmation in
18 paragraphs 73 to 74 discusses the Smallhold decision. We are
19 not suggesting that that decision is binding on Your Honor.
20 If Your Honor is inclined to consider the Smallhold analysis,
21 we agree -- we disagree with the debtors' argument that
22 Smallhold is inapplicable here. The debtors argue that FTX
23 is distinguishable because creditors are being paid in full
24 and Smallhold did not address a situation where creditors
25 were being paid in full, but Smallhold did address releases

1 by unimpaired classes whose creditors are being paid in full.

2 The debtors argue that Smallhold is inapplicable
3 because they are people who were eligible to vote, but did
4 not return a ballot, were not releasing parties, but I think
5 it's clear what Judge Goldblatt was saying in that decision.
6 He wrote, "Whatever one might think about the propriety of
7 third party releases in the world before Purdue Pharma, this
8 Court concludes that in light of that decision there is no
9 longer a basis to argue with the conclusion in cases like
10 Washington Mutual, Emerge Energy, Sun Edison, or Chassix.
11 While the undersigned had previously been comfortable for the
12 reasons described in Arsenal, concluding that creditors that
13 failed to opt out may be deemed to consent to a plan's third
14 party release, the Court no longer believes it is appropriate
15 to do so."

16 That's page 26 of Judge Goldblatt's opinion.

17 I wanted to mention two other things about our
18 objection, Your Honor. First, in paragraph 47, we had cited
19 to the Restatement Second of Contracts, paragraph 69. The
20 quoted text in the citation is accurate, but the citation
21 itself is incomplete. It should say Restatement Second of
22 Contracts, Section 69, comment (a).

23 The second point, Your Honor, is in paragraph 59
24 of our objection. We cited to Judge Goldblatt's bench ruling
25 in TPC Group, Inc. to support the principle that voting to

1 accept does not necessarily manifest consent to a third party
2 release. I flag that because, as I read the Smallhold
3 decision, I'm not sure if Judge Goldblatt would still adhere
4 to that view. I don't want to speak for the Court, but I
5 flag it as potentially being a change in how the Court views
6 that issue.

7 To conclude, Your Honor, we respectfully submit
8 that contract principles govern whether a release is
9 nonconsensual; that, under contracts law, failing to respond
10 to an offer is generally not acceptance; and, similarly,
11 failing to respond to a plan solicitation is not consent.
12 People who took no action in response to the solicitation
13 materials should not be deemed to consent to the third party
14 releases. We submit that consent by inference or silence
15 should not be permitted. We acknowledge that the releases
16 are narrow in scope, they do not apply to conduct occurring
17 prepetition, they have various exceptions similar to
18 exculpation, but no matter how narrow they are in scope, if
19 they are nonconsensual, they are not permitted after Purdue.

20 So, we would respectfully submit that the Court
21 would be justified in requiring more than a failure to opt
22 out to establish consent in this case.

23 Unless Your Honor has any questions, that's all I
24 have.

25 THE COURT: Well, let me ask you a question. In

1 the context of a class action litigation, named plaintiffs in
2 that class action agree to a settlement with the defendants,
3 that settlement is a contract, isn't it?

4 MR. HACKMAN: Your Honor, I'm not a class action
5 lawyer --

6 THE COURT: Well, any settlement between two
7 parties is a contract, is it not?

8 MR. HACKMAN: I would not dispute that, Your
9 Honor.

10 THE COURT: Okay. So, in the context of a class
11 action, class action plaintiffs, which may be only one or a
12 few people, enter into a settlement agreement with the
13 defendants on behalf of hundreds, thousands, tens of
14 thousands of people who also have claims for the same thing
15 against that defendant. And a notice gets sent out to those
16 class action plaintiffs that says this is the settlement
17 we've entered into, you are one of the claim -- you have a
18 claim or a potential claim against the debtor -- or against
19 the defendant, if you want to opt out of this settlement and
20 pursue your own cause of action against that defendant, you
21 have the right to do so, but you've got to sign this form and
22 send it back to us; if you don't, you're deemed to have
23 consented and now you're part of the class, and you're going
24 to get whatever distribution there is under the terms of the
25 settlement.

1 How is that different from how it works in the
2 plan context where we have a committee with fiduciary duties
3 to all customers and other creditors in this case, with a
4 small number of customers and creditors who are participants
5 and sit on the creditors committee, who enter an agreement
6 with the debtors on a plan of reorganization that includes
7 something that says we're going to release claims against
8 third parties, send out notice to those parties and say, if
9 you don't want to participate in this, you have the right to
10 opt out, but you've got to sign this form and send it back;
11 if you don't, you're bound by the releases? How is that any
12 different from what happens in a class action?

13 MR. HACKMAN: Your Honor, I would submit that in
14 this case -- you know, Rule 23(b)(3) requires the Court to
15 find that there are -- that questions of law or fact common
16 to class members predominate over any questions affecting
17 only individual members, and that a class action is superior
18 to other available methods for fairly and efficiently
19 adjudicating the controversy, I don't think it would be
20 accurate to say that there are common questions of law or
21 fact to class members, assuming for the sake of argument that
22 the 23(b)(3) protections are a relevant factor.

23 So you have U.S. versus dot.com customer claims,
24 our office appointed an official committee to represent all
25 unsecured creditors, but there was a second ad hoc committee

1 of non-U.S. customers, presumably because different people
2 were in different situations. As I read Mr. Cleary's Phase 2
3 report, the examiner did not find evidence that the FTX U.S.
4 customer assets were misappropriated in the same manner as
5 the FTX.com customer assets, that's --

6 THE COURT: But they were still misappropriated --
7 not in the same manner, but they were still misappropriated.
8 Customer funds are gone. There's no question that all the
9 customers are in the same boat.

10 MR. HACKMAN: I believe his investigation had also
11 showed that there was little, if any, intentional comingling
12 of customer fiat currency with corporate fiat currency.

13 The shortfall at the dot.com exchange was very
14 different in size than the shortfall on the U.S. exchange. I
15 believe it was \$8 billion on the dot.com exchange versus \$141
16 million on the U.S. exchange. Beyond that, there's a
17 difference in treatment in this plan between larger customers
18 and convenience class customers. Some customers deposited
19 cryptocurrency assets on the exchanges that are subject to
20 English trust arguments that the debtors are advancing today,
21 others deposited non-fungible tokens who are simply receiving
22 those NFTs back, and then still others such as FTT token
23 holders are getting nothing.

24 There's also the issue of different customers are
25 in different situations in terms of their preference

1 exposure. And, as a simple bankruptcy matter, an official
2 committee is not appointed to advocate for a particular
3 creditor's interest, it's there to advocate for a class of
4 creditors, the unsecured creditors as an overall body.

5 There are -- I believe there were two million
6 customer accounts with net positive balances as of the
7 petition date in this case spread out over more than 20
8 countries, and I think it's unlikely that there would be
9 common questions of law or fact among all customers and
10 creditors.

11 THE COURT: Okay. Thank you, Mr. Hackman.

12 MR. HACKMAN: Thank you, Your Honor.

13 THE COURT: Anyone else wish to speak on the third
14 party releases?

15 Mr. Adler.

16 MR. ADLER: Good afternoon, Your Honor, David
17 Adler on behalf of the Kavuri parties, and Mr. Malamed (ph).

18 I join completely -- we join completely in the
19 comments made by the U.S. Trustee. I think that one of the
20 concerns here, which is reflected in the declaration of Mr.
21 Daloia, is in paragraph 8, which references that after the
22 voting deadline approximately 84 creditors contacted Kroll,
23 explaining that they received their solicitation package and
24 ballot near or after the voting deadline. So I had a little
25 bit of a colloquy with Mr. Daloia on that. The real concern

1 is what about all the people, the two million people who were
2 sent notice, what proportion of them did not receive anything
3 and did not bother to contact Kroll because they were unaware
4 of it because they never received it.

5 The debtors reference notice by publication. I
6 think that is insufficient, and I also think that -- in
7 looking at the issue of whether mere silence can equal
8 acceptance, in some circumstances -- when Judge Bernstein
9 considered it in Sun Edison, he was just looking at New York
10 law, I believe, but we have customers all over the world, I
11 don't know what the laws of South Korea are on silence and
12 whether it's acceptance or not. It's --

13 THE COURT: Well, the plan is governed by U.S.
14 law, it's governed by U.S. Bankruptcy law.

15 MR. ADLER: Well, I suppose that's an argument,
16 but if the customer never transacted in the United States,
17 there could be some more related issues than just looking at
18 Delaware law or U.S. law on whether silence is equivalent to
19 an acceptance. Even within U.S. law, there's obviously a
20 multitude of different case law on that issue.

21 So the problem, I think, is the fact that the
22 customers are scattered across the world, some of them most
23 likely never received any solicitation materials whatsoever
24 and have not come forward, and they're being -- they're
25 releasing claims against third parties as part of this plan.

1 The debtor is not getting a discharge, but these other
2 parties are getting the equivalent of a discharge, a release.
3 So I think that's another issue that the Court should be
4 mindful of --

5 THE COURT: Well, I've always taken the position
6 when considering third party releases that if a creditor or,
7 in this case, a customer of a creditor comes forward later
8 and says, hey, I never got notice, I didn't get the notice, I
9 didn't see the publications, I had no idea this was going on,
10 I'll listen to them and I'll consider that, and maybe give
11 them an opt-out on the release and say you can go ahead and
12 do whatever you want to do.

13 I can say, based on my experience and in
14 discussions with some of the other judges about their
15 experience, we've never seen someone come back later and say
16 I didn't get notice, I didn't get an opportunity to opt out,
17 I want that opportunity, but it's available. If someone can
18 come forward and say I didn't get it, I'll listen to what
19 they have to say and make a decision on a case-by-case basis.

20 MR. ADLER: I think that is appropriate, Your
21 Honor.

22 And I just wanted to address the class action
23 question that you posed to the U.S. Trustee. From my limited
24 perspective, in those cases, generally, the creditor base is
25 not known. So the only method you can do is notice by

1 publication --

2 THE COURT: Sometimes they're known.

3 MR. ADLER: Sometimes they're known, but a lot of
4 times --

5 THE COURT: I just got one not too long ago where
6 someone sent me a notice and said, hey, you bought such-and-
7 such, saying you're a member of this class.

8 MR. ADLER: I get them from Toyota all the time
9 and I don't even remember owning a Toyota. But be that as it
10 may, Your Honor, you know, I think it's a mechanism that
11 exists in those cases where there's a lot of unknown
12 creditors, certainly not the entire universe is known, and I
13 think in those cases there's much more disclosure about the
14 noticing process.

15 Here, what concerns us is the fact that there's an
16 affidavit of solicitation that's on file, it doesn't list --
17 I mean, everything is sealed. So, you know, it -- and I
18 think, Your Honor, in the perfect world, the releases would
19 be confined to those who turned in the ballots and checked
20 off the box, but I understand Your Honor may have different
21 views on it, but I think, given the multitude of creditors
22 and countries in this proceeding that it's difficult, you
23 know, to know who actually received the notice versus who
24 didn't. All we know of are the people who received notice,
25 but received it late.

1 So do you have any questions for me?

2 THE COURT: No, that's it. Thank you.

3 MR. ADLER: Thank you.

4 THE COURT: Does anyone else wish to be heard?

5 MR. ENTWISTLE: Your Honor, I'll be very brief,

6 Andrew Entwistle with Entwistle & Cappucci on behalf of the

7 adversary class plaintiffs.

8 Just to respond to your questions regarding what

9 happens in class actions, you have it exactly right. There's

10 notice that goes out, it's very similar to the type of notice

11 here, and in most of those cases, as you have acknowledged

12 yourself has received, there are two kinds of notice.

13 There's notice by publication, which we had here, there's

14 also notice that goes out directly to identifiable class

15 members, and also to transfer agents or other folks that

16 manage funds for groups.

17 Now, in this case, obviously, we have notice that

18 went out in a number of different contexts, not only for the

19 plan, but also with regard to the customer notice, which was

20 the customer priority settlement, which we discussed at

21 length. There were a large number of publications and

22 notices, releases, press releases by both the debtors; we

23 published some ourselves on behalf of class members. The ad

24 hoc committee and the UCC all put notices out with regard to

25 the settlements just to advise customers about what was

1 happening. They also got notices, at least from us, to the
2 extent we could publish information, with regard to the opt-
3 out process, to the extent they wanted to opt out. But the
4 notice that happened here is very much like what would have
5 happened if we had had a 7023-type class before Your Honor
6 with regard to these settlements. It's exactly what was
7 contemplated, I think, in terms of the notice to the plan.

8 And of course notice is never perfect, right? And
9 to the extent there were some questions earlier with regard
10 to the notice process, there are always a couple of folks
11 that -- you know, you can't say that everybody got it, all
12 you can do is say who you sent it to, I think that's what
13 happened here. I think the record is really well developed
14 in terms of the solicitation that went out, particularly to
15 the millions of customers that were on record, which were
16 easily identifiable here, and to, obviously, subsequent
17 holders of those funds and the like, as well as the other
18 creditors.

19 So I really just wanted to stand up and respond to
20 that part of Your Honor's question earlier today to the
21 extent that it was helpful.

22 THE COURT: All right, thank you, appreciate it.

23 MR. ENTWISTLE: Thank you, Your Honor.

24 THE COURT: I thought somebody raised their hand
25 briefly online, was there someone who wanted to be heard?

1 Was there -- Mr. Arush Sehgal. Go ahead, Mr. Sehgal.

2 MR. SEHGAL: Hi, I'm Arush Sehgal, one of the
3 creditors. I do also just agree with what was said by the
4 gentleman earlier that I didn't have a chance to -- well, my
5 voting packet arrived after the voting deadline had passed,
6 and I did intend to opt out of releases and I didn't -- I
7 didn't understand how to do it because I wasn't confident on
8 what to vote or how to vote. I just wanted to add that. If
9 given the opportunity to opt out, I would.

10 THE COURT: Okay, anything else? Thank you.
11 Mr. Glueckstein.

12 MR. GLUECKSTEIN: Thank you, Your Honor, just a
13 few points in rebuttal.

14 Just as a starting point, Your Honor, Mr. Hackman,
15 you know, suggested this idea that there's some per se rule
16 that was created by Purdue whereby it is just now the law of
17 the land that opt-out releases cannot be approved, and we
18 disagreed with that premise. As I noted earlier and as we
19 discussed at length in our papers, Purdue actually says the
20 complete opposite.

21 And so, once you get past that idea that there
22 isn't some per se unlawful rule, Your Honor has the ability
23 to form your own view -- it doesn't have to be one-size-fits-
24 all -- on the facts and circumstances of the case as to
25 whether the opt-out mechanisms that were proposed are

1 appropriate here under the circumstances. And in doing so we
2 can't lose sight of the fact of what these third party
3 releases are.

4 There was a whole bunch of discussion about types
5 of claims and are customers similarly situated. Your Honor,
6 we're not releasing any prepetition claims or any claims for
7 prepetition conduct. So the question, honestly, of what
8 happened on the FTX exchange versus the dot.com exchange,
9 whether there was different misconduct by certain executives
10 or insiders versus others, none of those claims are being
11 released, they're outside the scope of the release. The only
12 thing that is within the scope of the release in this case,
13 right, has to do with the business of the case and plan
14 formation. It's a limited scope of parties. All of those
15 parties are somewhere in this courtroom or on the Zoom. Your
16 Honor has jurisdiction over those claims.

17 What we're talking about here are claims that
18 third parties would have to bring against parties who
19 participated in the plan formation process and the
20 proceedings before Your Honor. If those claims were going to
21 be asserted, Your Honor would have jurisdiction over those
22 claims. And so what these releases are doing is ensuring
23 that those claims, to the extent somebody did not opt out,
24 are being released and they're being -- there's estoppel
25 around the case. It does start to sound a lot like the

1 grounds for exculpation, but the parties who are the
2 beneficiaries incrementally of these releases are not
3 eligible for exculpation. The U.S. Trustee's Office made
4 that point clear and we worked through that with them, and
5 they are not in the exculpation provision that's in the plan
6 that we're asking Your Honor to approve.

7 So this is not a situation where it might be where
8 we had a general release of all prepetition officers and
9 directors, where some of the questions -- some of the
10 responses to Your Honor's question about class action might
11 become relevant. I would submit, though, the real question
12 on class action is the noticing, and Your Honor has that a
13 hundred percent correct. And as I said in my remarks
14 earlier, the issue here is there could not hardly be a
15 suggestion that more notice could be provided of these
16 releases to more people. The estate has spent a fortune
17 noticing this plan, filing a publication notice, all within a
18 rubric that was approved by Your Honor in connection with our
19 solicitation procedures.

20 So what we have here are the same -- effectively
21 the same post-petition claims that all the creditors would
22 have that we're saying, if you didn't check the box and opt
23 out of the release that you had an opportunity to do, you're
24 going to be bound by those releases. And I think certainly
25 the Rule 23 class action noticing, I would submit, is

1 available more broadly because there certainly is no per se
2 rule.

3 But for Your Honor to approve the releases in this
4 case, you can look at it in the context of what is actually
5 being released, who's being released, and for what. And for
6 all of those claims, to the extent any creditor actually has
7 a direct claim against any of these parties for the business
8 of the case, Your Honor has jurisdiction over those claims,
9 and we submit that the release and the opportunity to opt out
10 is appropriate.

11 THE COURT: Let me ask you a quick question, Mr.
12 Glueckstein. Did anybody opt out that submitted those?

13 MR. GLUECKSTEIN: Yes.

14 THE COURT: How many did the debtor receive? If
15 you have a general number, you don't have to give me an exact
16 number, if you know.

17 MR. GLUECKSTEIN: Let me see if I can get one -- I
18 will get one. There are certainly opt-outs.

19 And while we're getting that number, Your Honor, I
20 would just say on this point of the solicitation or errors in
21 the solicitation, to the extent that postal service delivery
22 caused the issues that are referenced in the declaration that
23 was admitted into evidence today, as noted in there, we've
24 corrected those issues, we've given people an opportunity.

25 Mr. Adler's clients submitted their ballots, they

1 I believe opted out of the releases. So he doesn't even have
2 standing to be advocating on this point generally, but from
3 -- where irregularities were identified with respect to this
4 issue, we've addressed those issues, and that's in the record
5 and evidence before the Court.

6 THE COURT: Were you aware of Sehgal's argument
7 that he did not receive notice and wanted to opt out, but
8 didn't have the opportunity?

9 MR. GLUECKSTEIN: I personally am not aware of the
10 circumstances of his situation, so that's something we could
11 look into.

12 THE COURT: Okay.

13 MR. GLUECKSTEIN: So we think, ballpark, we have
14 somewhere in the neighborhood of between three and 4,000
15 creditors who opted out of the releases, who returned an opt-
16 out election.

17 THE COURT: Okay. Thank you.

18 All right. The Supreme Court decision in Purdue
19 Pharma determined that nonconsensual third parties releases
20 are not permissible in the context of a bankruptcy plan of
21 reorganization. The Court specifically left open the
22 question of what constitutes consent and declined to address
23 that issue. So the lower courts now are going to try to have
24 to figure that out.

25 In my view, the Supreme Court was not saying that

1 third party consensual releases through an opt-out process
2 are per se improper. I think opt-out releases remain a valid
3 way for a debtor to be able to obtain releases through the
4 plan process and do so on a consensual basis because the
5 parties are given the opportunity to opt out; if they don't
6 opt out or if they don't return a ballot at all, then they're
7 presumed to have opted out. And I don't have any issues with
8 that process per se. As Mr. Glueckstein pointed out, it is
9 done on a case-by-case basis.

10 And, in this case, I'm satisfied that the opt-out
11 process was appropriate. The releases are very narrowly
12 tailored, they do not include opt-outs for conduct that
13 occurred prepetition, it's limited in the scope of the number
14 of people who are subject to the releases, and parties were
15 given individual notice through the notification process,
16 over a million, as Mr. Adler pointed out, received a ballot
17 and an opportunity to opt out, and there was also an
18 extensive publication notice. And both of those ways of
19 giving notice to parties are acceptable in the context of
20 class action litigation, and I don't see why it would be any
21 different here under the facts and circumstances of this
22 case. I think the creditors and the customers are in the
23 same position as every other customer and claimant. They are
24 getting -- they're going to get paid; some are going to get
25 paid, according to the plan, they'll get paid in full, some

1 will not get paid in full, but they all were given the same
2 opportunity to opt out.

3 So I'm satisfied at this point that those opt-out
4 releases are appropriate and I will overrule the objection,
5 and, again, based on the facts and circumstances of this
6 case.

7 Now, Mr. Sehgal, I hope I'm pronouncing your name
8 correctly, you should --

9 MR. SEHGAL: Thank you, yes.

10 THE COURT: -- you should reach out to debtors'
11 counsel and see if you can work out something with them on
12 whether you got notice, if you didn't get notice in a timely
13 fashion in order for you to opt out, and whether they're
14 willing to agree to allow you to opt out at this point. If
15 they are not, then you are going to be in a position where
16 you will have to file an action against whomever it is you
17 think you have a cause of action against -- and, again, this
18 is only -- this doesn't deal with prepetition conduct, so
19 it's only things that happened after the bankruptcy was filed
20 -- you would have to file a cause of action against them, an
21 adversary proceeding in the Bankruptcy Court, and raise -- or
22 defend against an argument by the party that you sue that you
23 opted out of those releases, and I'll deal with that at that
24 time. But at this point I'm not going to say that you're
25 entitled to opt out at this time because I just don't know

1 the facts and circumstances of what you received and when you
2 received it and how you received it, and whether you had a
3 proper opportunity to opt out. Okay?

4 MR. SEHGAL: Yes, thank you.

5 THE COURT: Do the debtors have contact
6 information for Mr. Sehgal?

7 MR. GLUECKSTEIN: Yes, we do, Your Honor.

8 THE COURT: Okay. So they'll be reaching out to
9 you, Mr. Sehgal, to address the issue. Okay?

10 How much -- how many more objections do we have?
11 Do we need to take a lunch break now and --

12 MR. GLUECKSTEIN: Yeah, happy to, Your Honor.
13 Just so to preview, we have the remainder of Mr. Adler's
14 objection for his clients, I was going to address that next,
15 so we can either do that before or after the lunch break, and
16 then we have three objections after that.

17 THE COURT: Okay. So let's go ahead and take our
18 break now. How much time do you want to have for lunch?

19 MR. GLUECKSTEIN: I think we can be -- we can be
20 quite short, Your Honor, whatever you think.

21 THE COURT: We can do -- come back at a quarter
22 'til 2:00?

23 MR. GLUECKSTEIN: Sure, that's more than
24 sufficient.

25 THE COURT: Okay. We'll do a 45-minute recess for

1 lunch and we'll come back at quarter 'til 2:00. Thank you.

2 MR. GLUECKSTEIN: Thank you, Your Honor.

3 (Recess taken at 12:56 p.m.)

4 (Proceedings resume at 1:46 p.m.)

5 THE COURT: Good afternoon, everyone. Thank you.
6 Please be seated. Mr. Glueckstein?

7 MR. GLUECKSTEIN: Good afternoon. Brian
8 Gluckstein for the Debtors. I think that brings us where we
9 left off before the lunch break. I'm going to address what I
10 think are the remaining pieces of the objection filed by Mr.
11 Adler's clients, the Kavuri group, and it was joined or filed
12 by one of his other clients, Mr. Melamed.

13 The first issue, Your Honor, is this argument that
14 the debtor's plan somehow must provide for in-kind
15 distributions of digital assets. There is no legal basis in
16 the Bankruptcy Code or anywhere else to require the debtors
17 to provide in their plan for in-kind distributions on account
18 of claims based on digital assets.

19 As established by Mr. Mosley and throughout the
20 record of these Chapter 11 cases, the Debtors could never
21 have made in-kind distributions because there was a massive
22 shortfall of digital assets held on the petition date
23 compared to customer liabilities.

24 The Debtors have also spent the better part of the
25 last two years monetizing and maximizing the value of their

1 assets in accordance with orders issued by this Court,
2 including the coin monetization order. The Debtors have
3 taken great steps to avoid the volatile market fluctuations
4 and other risks in speculating in digital assets during the
5 pendency of these Chapter 11 cases.

6 Mr. Coverick testified this morning, including on
7 cross examination, about the prohibitive factors to in-kind
8 distributions that the Debtors, or anybody else for that
9 matter, would face.

10 The Debtor's focus remains on getting
11 distributions made to creditors as soon as practicable, which
12 any creditor, of course, can then use to invest in digital
13 assets as they so choose.

14 There's some suggestion to some tax ramifications,
15 or somehow some tax ramifications of individual creditors as
16 a basis to impose this requirement. Of course, there's no
17 evidence before the Court or tax opinion before the Court as
18 to any individual creditor's tax liabilities as a result of
19 receiving distributions from this estate.

20 And of course, those questions would vary, and the
21 answers to those questions would vary by jurisdiction, with
22 distributions being made to creditors around the world.

23 Your Honor, furthermore, there's no basis for the
24 Kavuri parties to suggest that somehow a Chapter 7 trustee
25 might do so in the context of this argument that we somehow

1 don't pass the best interest tests on this basis. Chapter 7
2 trustee, of course, would face the same hurdles, and many
3 more because the conversion would negatively impact all
4 creditors who would lose the benefits of the plan and related
5 settlements.

6 The suggestion is also inconsistent with the
7 mandate of a Chapter 7 trustee whose role is to liquidate and
8 distribute assets, not take risky actions purchasing digital
9 assets for the benefit of a few.

10 The second issue that was raised that has not been
11 addressed has to do with the disclosures around the
12 liquidating trust. Kavuri parties assert that the debtors do
13 not satisfy the best interest test of Section 1129(a)(7)
14 because of inadequate disclosure regarding the liquidating
15 trust. The Kavuri parties, we submit, are wrong.

16 The debtors have disclosed a wind-down budget and
17 was testified across examination this morning by Mr.
18 Coverick, was addressed in his declaration, and submitted
19 their liquidation analysis with the disclosure statement that
20 was approved by this Court.

21 There's no credible argument that the compensation
22 of the plan administrator and the wind-down trust board,
23 which are projected and contained in the wind-down budget
24 that is disclosed and has been available since the filing of
25 a planned supplement, well in advance of voting deadline

1 would cost more than Chapter 7 liquidation at this point.

2 Beyond that, Your Honor, the debtor's disclosure
3 satisfies the requirements of Section 1129(a)(5) because they
4 include the identity and affiliations of the post-emergent
5 board and of the plan administrator.

6 There is, we submit, and we brief this in our
7 papers, there's no compensation disclosure requirement
8 because the requirement of Section 1129 applies to directors
9 and officers of the reorganized debtor, and here there are
10 none. We are establishing a trust, but beyond that, to the
11 extent 1129(a)(5)(b) does apply, the debtors have made
12 sufficient disclosure of the identities and affiliations of
13 the wind-down trust directors and officers and the nature of
14 their compensation, which is what's required by statute.

15 The wind-down budget also estimates all costs of
16 the wind-down trust, including its cost of governance, as Mr.
17 Coverick explained this morning on cross examination.

18 Further details on the compensation of the plan
19 administrator are not yet available and not yet knowable
20 because the trust, of course, does not yet exist and the
21 board that will ultimately make that determination is not yet
22 seated.

23 I think with those points, we covered the releases
24 issue. I'll reserve any comment if Mr. Adler raises other
25 points that I can address.

1 THE COURT: Okay, thank you.

2 Mr. Adler.

3 MR. ADLER: Good afternoon, Your Honor. David
4 Adler from McCarter & English, on behalf of the Kavuri
5 plaintiffs and Seth Melamed.

6 I'll address the crypto in-kind argument first.
7 As I asked on cross examination today, every crypto case that
8 I've seen has a distribution in-kind. And I understand, and
9 I'm not faulting the debtor on the fact that they monetize
10 their assets, the crypto, at the beginning of the case.
11 That's not the argument.

12 The argument is that when the money is going out,
13 why can't it pass through an exchange at that point and be
14 converted in-kind so that the customer receives back the same
15 type of crypto that they originally had put in. And it does,
16 I believe, make a difference in some jurisdictions.

17 I'll say it, I'm not a tax lawyer, but from what I
18 understand, if you had five Bitcoin on the platform and you
19 get back two Bitcoin, that's a distribution in-kind that is
20 not a taxable event. You get back stablecoin or cash, that's
21 a taxable event, as far as my limited knowledge goes.

22 So the point that I was trying to make today was
23 to see what efforts the debtors have done to move that
24 process along. Now, it's been done in Celsius, it's been
25 done in BlockFi, and it seems to me that it could be an

1 optional process where the customer makes an election as to
2 whether they want to receive it through an exchange or not.
3 A customer can actually pay for it.

4 But, you know, we're talking about here today, and
5 it's a good thought, that the creditors are going to receive
6 140, 150 cents on the dollar. What I think a lot of the
7 crypto customers look at is they had X Bitcoin on the
8 platform.

9 Let's say they had ten Bitcoin on the platform.
10 That ten Bitcoin today would be worth \$650,000. Given the
11 Bankruptcy Code and Your Honor's digital estimation ruling,
12 that is capped at \$16,000. So they have a claim for
13 \$160,000, and if they get 140 percent on that, let's say
14 that's \$200,000. Now, they're getting that in cash. If
15 their basis is low, they're going to have a taxable event
16 associated with that.

17 I just think it's the right thing to do to
18 minimize pain to the customers, especially given the fact
19 that when FTX filed, that was the low point in the crypto
20 market, and it essentially has gone up since November 10,
21 2022.

22 And really what I wanted to see was where the
23 process was. And it looked -- from what I heard, there
24 wasn't much of a process. And I think really it is something
25 that should be done in fairness to the people who had crypto;

1 that was their property.

2 They may not be able to get Your Honor to compel
3 the return of it or the proceeds from it, but it was their
4 property that was taken, and in exchange, they're getting
5 back not their property, and maybe having a taxable event
6 associated with it. So that's my response on that point.

7 With respect to disclosure of compensation, I
8 heard the number of \$34 million as a wind-down budget. I
9 don't know. I've been in cases where the compensation is set
10 under the plan supplement for the board, for the plan
11 administrator.

12 I don't know why it can't be set now, but if Your
13 Honor is inclined not to have them disclose it, what the
14 members are getting paid, what I would ask for is that in the
15 operating reports that get filed post confirmation, that
16 there just be breakdown of the individual line items for each
17 of the different committees.

18 And I do want to say that there are, as I count
19 them, four different entities that are getting paid post
20 confirmation. There's the advisory committee, there's the
21 plan administrator, there's the FTX recovery trustee board of
22 directors. There's the Delaware litigation trustee. So
23 there are a lot of different entities that will be getting
24 paid, and each of them will have their own set of
25 professionals.

1 And I just think that, to me, the \$34 million
2 number sounded a little low, but I would like to see that
3 those numbers be disclosed going forward, you know, after
4 confirmation, because that was the first time I heard that
5 number.

6 THE COURT: Well, let's go back to the first
7 issue. How, I mean, any case where you have a debtor holding
8 assets that are subject to fluctuation, you're going to --
9 people are going to say, well, I want my money back as a -- I
10 want it back in cash as the date of the petition date,
11 because the value of that property is now less than was
12 before.

13 And others are going to say, well, I want the
14 value of the property as it is today. So I want the property
15 back. But what in the code, can you answer Mr. Glueckstein's
16 question? What in the code says I have to make the debtors
17 do that?

18 MR. ADLER: I think that it is consistent with
19 good faith to try and give the customers back that which they
20 originally put in.

21 THE COURT: But how? I mean, I don't have any --
22 you didn't put on any evidence to show me how that would
23 work. I mean, how would -- and I have testimony from Mr.
24 Mosley that it would not be able to work because of the vast
25 amount of -- over a million customers who submitted claims,

1 all different kinds of tokens. Some have gone up, some have
2 gone down.

3 You mentioned today the value of Bitcoin. Ten
4 Bitcoin would be \$66,000 today. A month and a half ago it
5 would have been \$77,000. It's gone down. If the debtors
6 start buying up billions of dollars' worth of coin, the price
7 is going to go up and then they can't buy as much, and people
8 aren't going to get as much in distribution. And I have no
9 answer to that.

10 MR. ADLER: I'm not asking for the debtors to buy
11 it, okay? I don't want the debtors to buy it. I just want
12 the debtors to be able to distribute on a customer's behalf
13 to an exchange where that exchange can convert it into the
14 crypto to be placed into the customer's account.

15 All I want is an exchange after the debtor's
16 distributed. Debtors are not going to buy crypto. They
17 distribute it to Coinbase. Let's use Binance, distributed to
18 Binance. And what shows up in the customer's account is the
19 in-kind of what they originally put on.

20 THE COURT: Explain to me how. I don't understand
21 how that would work. How would that possibly work?

22 MR. ADLER: It worked in Celsius. Coinbase was
23 retained. They distributed Bitcoin, they distributed E.
24 Those people who got Stablecoins, they were allowed to
25 convert, I believe, at the time it got to Coinbase. I mean,

1 there's -- and I believe the same process is going on right
2 now in BlockFi, where customers can sign up and basically let
3 Coinbase be an agent, and the distribution passes through
4 them such that what they receive is ultimately what they put
5 in.

6 THE COURT: But every case is different, and I
7 don't know how much coin, what types of coin were in the
8 BlockFi and the other cases. Every case is different. I
9 know in this case, there were over 1,300 different types of
10 coin.

11 MR. ADLER: You are correct, Your Honor. I think
12 that it's -- I'm going to say this. I think it is the
13 equitable thing to do to try and minimize tax events to those
14 people who have been injured.

15 THE COURT: All right. Okay. Thank you.

16 Mr. Glueckstein? Oh, nope. Nobody else?

17 MR. GLUECKSTEIN: Thank you, Your Honor. Just a
18 couple of points. The unrefuted testimony, there's been --
19 the only evidence that's been presented to the Court in
20 connection with this hearing on this issue was the testimony
21 from Mr. Coverick and then also some testimony from Mr.
22 Mosley on cross examination on what the debtors were doing
23 and why they didn't do it with respect to this issue of
24 allowing just all tokens to be the subject of in-kind
25 distributions.

1 Mr. Adler's arguments, respectfully, are wrong
2 with respect to what has happened in the other crypto cases,
3 which are not relevant, as Your Honor notes, and certainly
4 the suggestion that the reason why we should do this is to
5 somehow minimize tax liability. What we just heard was now
6 Mr. Adler saying, we're not looking for the debtors to
7 actually acquire the crypto and make in-kind distributions.
8 We can just facilitate in-kind distributions through a
9 distribution agent.

10 I'm not a tax lawyer either, but there is no way
11 in any country in the world that that is going to satisfy
12 some sort of tax requirement that's going to give some tax
13 benefit to the customer. The purchaser of the crypto at that
14 point is going to be the third-party distribution agent.

15 But regardless, there's no requirement for any of
16 this in the Bankruptcy Code. And to the extent that what
17 these objectors are arguing is that somehow the basis for
18 their argument in which this was raised doctrinally, was a
19 best interest test objection. And the idea that somehow
20 these debtors are not providing maximum value through this,
21 there's no evidence of that whatsoever. None. No evidence
22 in the record.

23 In fact, what we heard from Mr. Coverick, both in
24 his declaration and on cross-examination, is that trying to
25 do this, if the debtor were to embark on such a process,

1 would have a number of negative consequences for creditors.
2 A significant majority of the customers in this case, hold
3 fiat and stablecoin claims.

4 And so the idea that the estate, either through a
5 distribution agent or itself, is going to speculate at this
6 juncture in trying to deliver cryptocurrency, the business
7 judgment of the Debtor has been that we're not going to do
8 that.

9 And so we also heard from Mr. Mosley and Mr.
10 Coverick that the Debtors are in discussions, continuing
11 discussions, in a competitive process with the distribution
12 agents to provide distribution services to the Debtors the
13 terms of which are still to be determined. And that one of
14 the things which is clear in the plan that the debtors are
15 exploring is the possibility of an election for stablecoin
16 distributions.

17 But none of these issues are plan issues. And
18 just to be clear, the suggestion from Mr. Adler that he wants
19 to suggest what is best for the creditors of this estate with
20 no evidence from the podium, when he's representing a grand
21 total of four creditors, there's no basis to make these
22 proclamations. There is absolutely no requirement that the
23 Debtors change the distribution architecture that he assigned
24 it to in the Bankruptcy Code or otherwise that would require
25 a change here.

1 So we submit on that issue. There is absolutely
2 no reason, equitably, legally, or otherwise, to force the
3 Debtor to do something different than the process they're
4 currently on in exploring how they're going to make
5 distributions to creditors.

6 On the disclosure issue, we covered this. The
7 wind-down budget more than satisfies our obligations under
8 the Bankruptcy Code. What is required in the plan and the
9 plan supplement documents satisfy all of those requirements.
10 That is the standard that needs to be passed for confirmation
11 today. There's no continuing obligation of disclosure on the
12 post-emergence Debtor.

13 Clearly, through the voting process and this
14 approval process, the other creditors have either
15 affirmatively supported this architecture, including the
16 board's and the plan administrator. They'll be working post-
17 emergence or otherwise, if not objected to it.

18 So we would ask, Your Honor, that the remaining
19 portions of these creditor's objections be overruled.

20 THE COURT: Thank you. I am going to overrule
21 these objections. There's nothing in the code that would
22 require the Debtors to provide in-kind distribution to
23 customers and creditors. And the evidence, the only evidence
24 I have is that doing what Mr. Adler's clients are asking me
25 to do would actually be harmful to the creditors, not

1 beneficial.

2 If I had other evidence, I could consider it, but
3 I don't have any. So the only thing I can say is the Debtors
4 have exercised their business judgment. This looks like the
5 best way to handle distributions. The evidence I have
6 supports that conclusion, and therefore, I will overrule the
7 objections.

8 MR. GLUECKSTEIN: Thank you, Your Honor. I think
9 we have three remaining. The next objection that I will
10 address is the objection that was filed by the LayerZero
11 group. There's two main components to this objection.

12 First, they dispute their exclusion from the
13 customer preference settlement as somehow being in violation
14 of Section 1123(a)(4) as unfair discrimination issue under
15 the plan.

16 And two, there's a challenge in their papers, at
17 least, to the ability to include language with respect to
18 502(d) in the plan.

19 With respect to the customer preference
20 settlement, Your Honor, I want to address what the customer
21 preference settlement is and what the evidence actually shows
22 with respect to the customer preference.

23 As in every case, the debtors at some point need
24 to make a decision as to how they are going to handle
25 preference claims, which are going to be preserved, which are

1 going to be pursued, which are going to be settled, and on
2 what terms.

3 As Mr. Coverick explained in his testimony, in his
4 declaration, the Debtors had extensive discussions with their
5 creditor constituencies, including the official committee and
6 the ad hoc committee, about how to handle customer preference
7 claims. No customer, including those in the LayerZero group,
8 have some right to a settlement of preference claims.

9 The Debtors in their business judgment, on the
10 other hand, do have the right to retain any or all of the
11 preference claims and pursue them to maximize the value of
12 these estates.

13 As Mr. Coverick made clear, as a result of
14 discussions with creditors, given the projected recoveries
15 for allowed customer claims, along with other factors, the
16 debtors decided they would make settlement offers to most,
17 but not all, of those customers with preference exposure.

18 And to protect the estate, the Debtors negotiated
19 with the official committee, and the ad hoc committee, and
20 other stakeholders certain general categories of customer
21 preference defendants that the Debtors believe, again in
22 their business judgment, are appropriate to retain and not to
23 provide settlement offers at this time.

24 There's nothing unusual about that. And there's
25 nothing about these determinations that permit the target of

1 those lawsuits, including the LayerZero group parties, to
2 come before this Court and argue, as they're doing today,
3 that the Debtors are required to provide them a settlement
4 offer.

5 On the face of that argument, it makes no sense.
6 So what did they do? In order to manufacture standing, to do
7 so, the LayerZero parties wrongly argue that offering the
8 customer preference settlement to some but not all customers
9 violates Section 1123(a)(4) of the Bankruptcy Code. We
10 submit that this argument is baseless.

11 As Mr. Coverick made clear in his declaration, the
12 customer preference settlement is not plan or claim treatment
13 provided on account of customer entitlement claims. Your
14 Honor, that is the operative testimony from the Debtor's
15 perspective, and it's unrefuted, not the application of the
16 factors, which we'll get to in a minute, to LayerZero.

17 The question here for the Court is, is this plan
18 treatment or not? And the facts and circumstances of what
19 this settlement is, where it came from, and why it appears in
20 the plan where it does are all in Mr. Coverick's testimony,
21 and those portions of his testimony are unrefuted with any
22 other evidence.

23 Your Honor, the customer preference settlement is
24 completely separate. It was negotiated separately. It was
25 discussed separately in the disclosure statement and in the

1 plan. This settlement is no different than other settlements
2 in this case and others that are being implemented through
3 the plan process as permitted expressly by Section 1123(b) (3)
4 of the Bankruptcy Code, but are separate settlements from the
5 treatment of claims against the Debtors that are provided for
6 in the plan.

7 The customer preference settlement consists of the
8 Debtors making offers to certain creditors who then had the
9 opportunity to consider the offer's terms and whether or not
10 to accept them on an individual creditor basis. To accept
11 the Debtor's offer, the customer needed to elect into the
12 settlement, agreed to the Debtor's proposed stipulated claim
13 amount, which was of critical importance to the Debtor, and
14 to vote in favor of the plan.

15 As Mr. Coverick details in his declaration, there
16 was significant administrative savings for the Debtors by
17 obtaining stipulated claims amounts and not needing to
18 reconcile those claims later. The Debtors did utilize the
19 solicitation process to make these settlement offers. That
20 was clear back at the time the solicitation procedures were
21 approved.

22 And we did that because we were already spending
23 significant time and money sending materials to close to one
24 million voting creditors, and it was the most efficient thing
25 to do. Otherwise, we'd have to separately solicit offers and

1 acceptance of the preference elements to many of those same
2 creditors.

3 But of course, every potential preference claim is
4 different, has potentially different defenses to it and
5 constitutes a claim by the Debtors against the customer that
6 is completely unrelated to the customer's claims against the
7 Debtors, which are the claims that are being addressed
8 through the classes in the plan.

9 The preference settlement offer is not on account
10 of any claims against the Debtors and outside the scope of
11 the plan's treatment of claims. And once that's established,
12 there can be no unfair discrimination and Section 1123(a)(4)
13 is inapplicable.

14 What LayerZero is really saying is they don't
15 believe the Debtors in their business judgment had a basis to
16 exclude them from receiving an offer to settle preference
17 claims. But that argument holds no water outside of the
18 context of 1123(a)(4). There is simply no legal basis
19 whatsoever for LayerZero to require the Debtors to make them
20 a settlement offer.

21 The criteria set forth for excluded customer
22 preference actions were established, again, as explained in
23 Mr. Coverick's testimony, after extensive discussions with
24 the creditor's committees to protect the Debtors and to
25 ensure that offers were not made to settle certain types of

1 customer preference actions too early in the process.

2 The customer preference defendants are not the
3 counterparties or the intended beneficiaries of those
4 criteria that we've heard so much about. As Mr. Coverick
5 testified, the Debtors evaluated the potential preference
6 claims against the criteria set forth in Section 5.5 of the
7 plan and in exercising their business judgment, decided to
8 place certain actions on the list of excluded customer
9 preferences actions.

10 With respect to each of the LayerZero defendants,
11 the basis for their inclusion on the excluded customer
12 preference action list is self-evident by the public record
13 and confirmed by Mr. Coverick.

14 The Debtor's criteria simply provide that the
15 Debtors determined in their business judgment that there is a
16 reasonable basis to conclude that, among other things, any
17 debtor has a cause of action or defense against the recipient
18 of the preference or any of its affiliates other than a
19 preference claim. That's the relevant portion of that
20 provision that we've been discussing and that is at issue
21 with LayerZero.

22 Each of the LayerZero parties are already named as
23 defendants in an adversary proceeding in which the Debtors
24 have alleged multiple causes of action based on allegations
25 that LayerZero benefited from transactions with Alameda

1 Ventures using misappropriated FTX group funds, and then took
2 advantage of the FTX group's desperate need for cash in the
3 hours leading up to their collapse.

4 Those claims, all of them, are in their early
5 stages of being litigated and discovery is ongoing in the
6 adversary proceeding that is pending before Your Honor.

7 For purposes of making offers to settle preference
8 claims, it is perfectly reasonable for the Debtors to retain
9 all of their rights against those litigation defendants and
10 resolve any and all claims there in that adversary
11 proceeding.

12 LayerZero's attempt to use the Debtor's offer of
13 customer preference settlements to other customers to force
14 the Debtors and now request this Court to force the Debtors
15 to release claims that are the subject of pending litigation
16 and where other claims might still be asserted post discovery
17 should be rejected.

18 What we're really doing here, Your Honor, just to
19 put a fine point on it, is what they are asking this Court to
20 do is to strike Counts 5 through 8 and 10 of the pending
21 adversary proceeding complaint. They want them stricken.
22 They don't want to defend those causes of action, and their
23 basis for doing that is that we have made offers of
24 settlement of preferences to other customers in connection
25 with plan solicitation.

1 The other issue that they've raised involves
2 Section 502(d). LayerZero seems to take issue with Section
3 8.3.2 of the plan, which contains familiar language stating
4 that claims shall be deemed temporarily disallowed pursuant
5 to Section 502(d) of the Bankruptcy Code until a cause of
6 action asserted by the Debtors is resolved.

7 The Debtors have pled claims pursuant to Section
8 502(d) of the adversary proceeding against the LayerZero
9 parties. The plan provision does not permanently disallow or
10 do anything to prejudge the claims in that adversary
11 proceeding.

12 Rather, the plan provision recognizes the
13 indisputable case law holding that Section 502(d) can be
14 applied on an interim basis to allow the allowance of the
15 claim where the creditor is subject to an avoidance action.
16 That's exactly where LayerZero, all three of the LayerZero
17 parties sit.

18 The language in Section 502 (d) of the code is
19 mandatory. Courts are clear that because the focus is on the
20 creditor and not the claim, any avoidable transfer may
21 require disallowance of all of that creditor's claims until
22 resolved. Courts regularly recognize, we cite cases in our
23 papers and as was discussed by the Court in Enron and
24 elsewhere, that where there's a pending avoidance action,
25 defendant's claims continue to be disputed claims and

1 distributions are temporarily prevented.

2 This language that's in our plan has been approved
3 by this Court and others in this district and numerous other
4 cases, including in SIO 2 and Cred, amongst others. It has
5 the exact effect of the pending adversary proceeding on the
6 allowance of the defendant's claim.

7 So we don't see any issue, either generally on
8 this point, and certainly with respect to LayerZero parties,
9 again, they are subject to litigation. But what we're asking
10 to do, Your Honor, is overrule the subjection. Let's allow
11 the adversary proceeding against the LayerZero parties to
12 resolve all of these matters, which is what should happen in
13 any event during due course through the litigation.

14 THE COURT: Okay. Thank you.

15 MR. GLUECKSTEIN: Thank you.

16 MR. SAZANT: Good afternoon, Your Honor. Jordan
17 Sazant of Proskauer Rose on behalf of the LayerZero group,
18 which is comprised of LayerZero Labs Limited, Ari Litan, and
19 Skip & Goose, LLC.

20 When these cases began nearly two years ago, the
21 ashes of FTX were still smoldering, and the Debtor's advisors
22 and new officers had to roll up their sleeves and locate
23 billions of dollars of assets all over the world in
24 cyberspace. And these cases presented a few critical and
25 difficult questions for the Debtors and for the Court and for

1 everyone else involved.

2 Who owned the assets held by FTX, the Debtors or
3 their customer depositors? And regardless of that answer,
4 given the \$9 billion shortfall on the FTX exchanges, how to
5 fairly allocate and distribute the value among the Debtor's
6 millions of customer depositors worldwide.

7 So the Debtors come before the Court with much
8 fanfare and touting the plan as this overwhelmingly
9 successful culmination of their efforts.

10 And the Debtors propose that the plan shall
11 constitute a good-faith compromise, settlement and resolution
12 of all claims, interests and causes of action against the
13 Debtors, including, among other things, issues relating to
14 the tracing of assets of individual debtors, the effects and
15 consequences of the .com TOS and U.S. TOS, and whether
16 exchange assets are property of the Debtor's estate. That's
17 at the confirmation brief of Paragraph 52.

18 And so through this global settlement, the plan
19 provides for the substantive consolidation of the Debtor's
20 estates, the prioritization of returning assets to customers,
21 and liquidates and distributes the assets to customers in the
22 form of cash.

23 All customers, regardless of their claim currency
24 denomination are expected to recover approximately 130
25 percent of their petition date value of the property, and a

1 complete waiver of preference actions for customers who
2 withdrew their assets prior to the petition date.

3 My clients, however, are one of the few exceptions
4 to that rule, as they find themselves among the excluded
5 minority to whom the waiver of customer preference actions
6 does not apply. As a result, the plan cannot be confirmed
7 for three independent reasons.

8 First, the plan violates Section 1123(a)(4) by
9 providing unequal treatment through a waiver of preference
10 claims only to those favored creditors who also agreed to
11 stipulate to their claim amounts and to vote to support the
12 plan and denying those recoveries to the excluded customer
13 preference actions.

14 The Debtors argue that the customer preference
15 waiver is not plan or claim treatment, but we will show why
16 that's incorrect.

17 Second, even if the customer preference waiver
18 doesn't constitute plan or claim treatment, the plan still
19 cannot be confirmed because it's offered in bad faith as
20 applied to at least two of the three members of the LayerZero
21 group.

22 While the Debtors purport to apply exclusive and
23 objective criteria to determine which customers should be
24 excluded from the customer preference settlement, as we've
25 already seen today, and as we'll discuss further, none of

1 those criteria are applicable to Mr. Litan or to Skip &
2 Goose.

3 And then third, the plan violates applicable
4 bankruptcy law by withholding distributions from liquidated
5 claims and invalidly treating them as disputed solely on
6 account of asserted preference actions that have not yet been
7 litigated to conclusion.

8 So for these reasons, which we'll take in order,
9 we believe the plan cannot be confirmed or, at the very
10 least, can only be with an amended excluded customer
11 preference actions exhibit that removes Mr. Litan and Skip &
12 Goose.

13 So we'll start with the unequal treatment under
14 1123(a)(4). One of the fundamental underpinnings of the
15 Bankruptcy Code is that similarly situated creditors must be
16 treated equally. Specifically, Section 1123(a)(4) of the
17 Bankruptcy Code requires that a plan provide the same
18 treatment for each claim or interest of a particular class
19 absent fee subject creditor's agreement otherwise.

20 As Your Honor noted at last week's hearing, one
21 can simply look to the terms of the plan and the plan
22 supplement and see clearly the discrepancies in treatment.
23 All creditors in Class 5 receive 130 percent of the petition
24 date value of their claim, and some receive the preference
25 waiver while others do not.

1 So the only question then is whether the portion
2 of recoveries associated with the waiver of preference
3 actions constitutes treatment on account of such creditor's
4 claims. The Debtors respond that it does not because it's
5 described and contained in a separate section of the plan,
6 and they argue that the settlement offer is not on account of
7 creditor's claims against the Debtors, but rather a
8 settlement of a Debtor's claim against the subject creditor.

9 But that's only part of the story when it comes to
10 the customer preference settlement. They also argue that the
11 only testimony before the Court is Mr. Coverick's declaration
12 that this is not planned treatment. But that is not an
13 evidentiary question. That is a legal question for the Court
14 and a conclusion for you to make.

15 So sure, the settlement offer proposes to resolve
16 the Debtor's potential preferences and preference actions
17 against creditors by waiving such claims, but the waiver of
18 claims isn't the settlement offer. Otherwise, the Debtors
19 could simply have applied the objective criteria, waived
20 those claims, and moved on.

21 But instead, the settlement has two requirements.
22 You must agree to settle with the Debtors as to the
23 calculation of your claim, settling the claim against the
24 estate, and you must agree to vote that claim in favor of the
25 plan. And worse yet, by tying the customer preference waiver

1 offer to a vote in favor of the plan, the Debtors ask this
2 Court to permit the -- to bind the excluded minority to
3 lesser treatment.

4 It's difficult to conceive of anything more
5 fundamentally tied to a creditor's claim than a settlement
6 that resolves its amount and its vote. The Debtors focus
7 solely on the settlement's resolution of the Debtor's causes
8 of action while ignoring entirely the creditor's agreements
9 under the settlement.

10 And while courts have approved plenty of plans
11 which have provided the payment of fees or other
12 consideration to certain creditors in the class in exchange
13 for backstop commitments, to exit financing, or assisting in
14 structuring transactions or other similar tangential reasons,
15 that's not the case here at all. None of these customers are
16 providing any separate value.

17 Instead, this case is similar to the Adelphia
18 bankruptcy cases where the Bankruptcy Court in the Southern
19 District of New York originally confirmed a plan providing
20 valuable releases and exculpations to creditors who voted in
21 favor of that plan and withheld such benefits from creditors
22 who opposed.

23 On appeal, the District Court for the Southern
24 District of New York stated that there is no doubt here that
25 in return for approving the plan, some claimants will receive

1 a more valuable settlement than others, i.e., additional
2 benefits on top of their pro rata distributions.

3 While such an outcome may be permissible where the
4 added benefit is given for truly collateral reasons, i.e.,
5 independent from their status as claimants, here, the benefit
6 is given in exchange for the claimants' affirmative vote for
7 the plan, an added benefit that is tied directly to the plan
8 itself and given to some claimants in a class but not all.

9 Such an inducement may well have led some
10 claimants to approve the plan when they otherwise may have
11 rejected it, and as a result, creditors opposing the plan may
12 have been prejudiced by a quid pro quo exchange of plan
13 approval for valuable releases and exculpation.

14 Section 1123(a)(4) guarantees that each class
15 member will be treated equally regardless of how it votes on
16 a plan where the receipt of valuable benefits in a plan is
17 conditioned on a vote to accept that plan, there is a very
18 real possibility of dissuading or silencing opposition to the
19 plan.

20 The Adelpia court granted a stay pending appeal
21 of that plan on grounds that there was substantial likelihood
22 that it would be overturned as a result. However, that plan
23 was ultimately consummated because the appealing creditors
24 could not post the bond that was ordered. And that's at 361
25 BR 337, and the quote is from Pages 363 to 64.

1 So here the benefit of the customer preference
2 waiver is granted not only on account of a creditor's vote in
3 favor of the plan, but also on account of stipulating to the
4 amount of the claim that's calculated by the Debtors and sent
5 out in the ballot. Those are not the same tangential reasons
6 or added benefits. This is part of the resolution of
7 customer claims and can't be offered prejudicially to the
8 majority of creditors at the exclusion of the disfavored
9 creditors.

10 Lastly, I just wanted one point from the Debtor's
11 reply. The Debtor's reply on this point cites to the Energy
12 Future Holdings case for the proposition that the customer
13 preference waiver is outside the scope of the plan's
14 treatment of claims, and to argue that the provisions of
15 Section 1123(a)(4) do not apply to the Court's evaluation of
16 the customer preference waiver.

17 But the EFH case is clearly distinguishable. The
18 Debtors quote EFH to state that under its plain language,
19 Section 1123(a)(4) applies only to a plan of reorganization
20 and therefore not to pre-confirmation settlements. But this
21 is not a pre-planned settlement. This offer's embedded
22 within the plan, was solicited through the plan ballots, and
23 requires a vote in favor of the plan.

24 It's not a 9019 settlement in the early stages of
25 the case, and notably the proposed confirmation order, which

1 I've checked the one file this morning, contains the same
2 language, it contains proposed findings by the Court that the
3 terms of the customer preference settlement are independently
4 fair, equitable, and reasonable and approves such terms
5 pursuant to Section 1123 of the Bankruptcy Code.

6 So if the Court agrees with our argument that the
7 customer preference waiver constitutes claim treatment under
8 the strictures of the Bankruptcy Code because of its
9 inextricable link to creditor's claim amounts and votes, then
10 the inquiry can end there, and the plan cannot be confirmed
11 due to the unequal treatment provided to creditors of the
12 same class.

13 But even if the Court disagrees and holds that the
14 customer preference waiver does not constitute claim
15 treatment despite the other terms of the settlement, then the
16 plan still cannot be confirmed until Ari Litan and Skip &
17 Goose are removed from the excluded customer preference
18 actions exhibit because, as applied to them, this plan is
19 internally inconsistent and offered in bad faith.

20 The Debtors represent that the customer preference
21 waiver is offered to all creditors who fall within the
22 objective set of criteria that it agreed upon with the UCC
23 and the ad hoc group. And there are a specific set of five
24 criteria in Section 5.5 of the plan that apply to potentially
25 exclude a creditor from the benefits of the customer

1 preference settlement waiver.

2 And as we've just heard from the Debtor's witness,
3 they cannot point to any evidence that any of the criteria
4 have been met as to Mr. Litan and Skip & Goose. The only
5 potential evidence cited by the Debtors and their declarant
6 is the adversary complaint, which, as you noted earlier, with
7 respect to the Celsius proof of claim, the adversary
8 complaint itself contains no evidence and is only mere
9 allegations.

10 And even if these allegations are credited,
11 they're insufficient to satisfy the objective criteria that
12 the Debtors state that they're appealing to. These criteria
13 are, first, that the recipient was an insider of the Debtor.
14 Mr. Litan and Skip & Goose were not insiders of the Debtors
15 and there are no such allegations in the complaint.

16 The recipient was a current or former employee of
17 the Debtor. Mr. Litan and Skip & Goose were not employees of
18 the Debtors and there are no such allegations in the
19 complaint.

20 The recipient may have had actual or constructive
21 knowledge of the commingling and misuse of customer deposits.
22 Mr. Litan and Skip & Goose had no knowledge of the Debtor's
23 fraud before it became public, and the Debtors make no such
24 allegations in the complaint.

25 The recipient either changed its KYC information

1 to receive preferential withdrawals or received assistance
2 from Debtor employees, which neither of which Mr. Litan or
3 Skip & Goose did, and no allegations are contained in the
4 complaint alleging such.

5 And finally, any debtor has a cause of action
6 other than a preference claim against the creditor or an
7 affiliate.

8 And so again, the Debtors point only to the
9 complaint that was filed against the LayerZero group in the
10 adversary proceeding as justification for excluding each of
11 the LayerZero group's members. But the Debtors have also
12 confirmed that there's no other basis for including the
13 LayerZero group. They are focused on the complaint. And the
14 witness has said all allegations underlying the complaint are
15 what they are relying on.

16 And a review of the complaint shows only non-
17 preference causes of action asserted against LayerZero Labs
18 Limited. And not that the complaint even contains any
19 allegations of such, but just to confirm, neither Mr. Litan
20 nor Skip & Goose are affiliates of LayerZero Labs, so they
21 would not qualify under the cause of action against an
22 affiliate category either. Mr. Litan was merely an employee,
23 is now a contracted consultant, and holds no voting rights in
24 LayerZero Labs, and just to confirm, neither does Skip &
25 Goose.

1 Either the objective criteria described in Section
2 5.5 of the plan have meaning and must be applied as written
3 or they do not. But the inclusion of Mr. Litan and Skip &
4 Goose on the excluded customer preference actions exhibit is
5 explicitly contrary to the terms of the plan and can only be
6 explained as a bad-faith attempt by the Debtors to extract
7 litigation leverage over LayerZero labs in the adversary
8 proceeding.

9 And so, for this reason, even if the selective
10 application of the customer preference waiver is permissible
11 under the Bankruptcy Code, the plan cannot be confirmed
12 without an amended plan supplement that removes Mr. Litan and
13 Skip & Goose from the excluded customer preference actions
14 list.

15 Notably, Paragraph 19 of the proposed confirmation
16 order contains a proposed finding that the plan supplement,
17 which includes the excluded customer preference actions list,
18 complies with the terms of the plan, and that finding simply
19 cannot be sustained by the Court under the current record
20 because the excluded customer preference actions list and
21 Section 5.5 and the objective criteria listed therein are
22 internally inconsistent with one another.

23 And then, finally, to address our last argument on
24 the disallowance of liquidated claims, the plan also provides
25 for the withholding of distributions to creditors on account

1 of all claims that are held by a creditor against whom the
2 debtors believe they have avoidance actions.

3 The disallowance and withholding of distributions
4 on account of otherwise allowable claims pursuant to Section
5 502(d) is not permissible in this district prior to an actual
6 judicial determination of liability on the defendant's part.
7 And we've cited to cases in this district holding the same,
8 including In Re Lids Corp at 260 BR 680.

9 The Debtor's reply argues that a delay in
10 distributions on otherwise allowable claims pending
11 adjudication of the adversary proceeding is permissible and
12 provided for in the Bankruptcy Code. But it's telling that
13 the Debtor's reply brief cites only to non-Third Circuit
14 cases.

15 So while the Debtors may be correct on the law in
16 other districts, precedent in this district is clear that
17 preventing distribution on otherwise allowed claims as a
18 result of mere allegations of avoidable transactions is
19 improper and cannot be approved.

20 So for all these reasons, we believe that the plan
21 cannot be approved as it provides for unequal treatment to
22 Class 5 creditors as a result of the customer preference
23 waiver. But even if you disagree with that, we believe that
24 the plan cannot be approved as currently constructed with the
25 plan supplement, including Mr. Litan and Skip & Goose as

1 excluded customer preference actions because that violates
2 the terms of the plan in Section 5.5 itself.

3 Unless Your Honor has any questions?

4 THE COURT: No questions. Thank you, Mr. Sazant.

5 MR. SAZANT: Thank you.

6 MR. GLUECKSTEIN: Thank you, Your Honor. Brian
7 Glueckstein. A few points in rebuttal. Counsel suggests
8 that the inclusion of these parties on the excluded
9 preference list is, in their words, litigation leverage. I
10 can hardly think of more of a litigation leverage play than
11 asking this Court to dismiss without adjudication Counts 5,
12 6, 7, 8, and 10 of a pending adversary proceeding complaint
13 that is pending before Your Honor.

14 The issue with respect to -- the suggestion here
15 is that we point to the complaint, the existence of the
16 complaint, as a reason to exclude. That is true. Point to
17 the allegations in the complaint. That is also true.

18 There's a bunch of representations made from the
19 podium by counsel about Mr. Litan, his relationship to
20 LayerZero. Lots of these facts are disputed. None of them
21 have been adjudicated. They are all going to be adjudicated
22 in the context of a complex adversary proceeding with a bunch
23 of transactions amongst three different parties who were
24 named as defendants by the Debtors in that action that
25 include LayerZero Labs, Mr. Litan, and Skip & Goose.

1 THE COURT: Mr. Litan says there's no claims
2 against Mr. Litan and Skip & Goose other than preference
3 claims in the complaint.

4 MR. GLUECKSTEIN: There's no claims that have been
5 asserted in that complaint, as of now, against those two
6 defendants, other than the preference claim. That is true.
7 That case is in the very early stages of discovery. And the
8 standard for the people that are on the excluded list is not
9 what we -- the criteria that we've negotiated and have
10 included in the plan, again, our position is for the benefit
11 of the estate, in consultation with our creditors, so that
12 we're not prematurely releasing claims, is that we have a
13 reasonable basis to believe we have claims.

14 It doesn't mean that we have asserted them all.
15 It doesn't mean that every complaint has been filed. It
16 doesn't mean that every count of every complaint necessarily
17 has been filed. This is an evolving process.

18 All we're saying, when we take a step back, is the
19 Debtors are not prepared at this time to make a settlement
20 offer to these parties because we have a complex piece of
21 litigation that is in discovery. Our investigations against
22 them, against other parties on that excluded preference list,
23 remain ongoing.

24 And so the suggestion that we have to look at, and
25 we can compare this standard, which again, we would submit

1 they're not the party to evaluate whether we've complied with
2 the carve-out or the criteria set forth in this. They are a
3 defendant in the litigation.

4 The question, which is why this all dials back to,
5 is if we accept the proposition for a moment that this is not
6 plan treatment, none of this is relevant because they're not
7 entitled as a litigation defendant to get a settlement offer
8 at any particular point in time from the Debtor. We included
9 in the plan, as Section 1123(b) allows us to do, provision
10 that incorporates a settlement that's being implemented
11 through the plan.

12 Mr. Coverick not only stated in his declaration
13 that his understanding, not as a legal matter, that, of
14 course, is for Your Honor to decide, but his understanding as
15 the business representative of the Debtors, where he
16 described his presence at meetings where these issues were
17 discussed, is that this is not a treatment on account of
18 claims. That is the testimony. Sections 26, 27, Paragraphs
19 26, 27, 28, 29 of Mr. Coverick's declaration addressed these
20 issues.

21 Counsel argues, well, there's no separate value
22 being provided by the creditors for the settlement of the
23 preference claims, and so therefore it must be plan
24 treatment. That's not true. Paragraph 28 of Mr. Coverick's
25 declaration, he addresses very clearly that the Debtors

1 benefit from not needing to reconcile the amount of each
2 customer's claim for those accepting and opting into the
3 customer preference settlement.

4 We could not force people to accept their
5 stipulated claim. If they want to litigate their claim
6 amount, they had the right to do that. They didn't need to
7 take the settlement. But to the extent that creditors opted
8 into the settlement and agreed to the Debtor's stipulated
9 claim amount, that ends the process of reconciling the
10 amounts of those claims for many creditors.

11 That's a significant benefit to the Debtors.
12 That's the testimony from Mr. Coverick in Paragraph 28 of his
13 declaration. That testimony is unrefuted.

14 What the record before Your Honor shows is that a
15 settlement was offered to creditors that was solicited in
16 connection with the plan process, but that election was
17 separate from the plan process, that settlement is described
18 separately in the plan and in the disclosure statement at the
19 time the solicitation procedures were approved by this Court.

20 And as we set forth, we are asking, we are asking
21 for approval of that settlement separately, both in
22 connection -- pursuant to 1123(b) and Section 9019 of the
23 Bankruptcy Code. And we briefed in our papers why we believe
24 the settlement on its terms, vis a vis the Debtor and the
25 customers, is an appropriate settlement of the customer

1 claims.

2 But the business judgment of the Debtor was to
3 exclude certain -- in consultation with the creditors, to
4 exclude certain creditors at this time from the settlement.
5 And out of everybody who's on that list, out of everybody
6 who's on that list of excluded customer preference actions,
7 these parties we have actually sued. There is pending
8 litigation before Your Honor, and we intend to pursue that
9 litigation until it's resolved.

10 And again, what they are asking Your Honor to do
11 today is say, on one hand, this is somehow plan treatment and
12 they just get it. But of course, I don't think they really
13 believe that because what they're saying is, well, even if
14 it's not, you know, we're going to try to apply and argue
15 that because, at this time, we have only asserted preference
16 claims against two of those defendants that somehow Your
17 Honor must summarily dismiss numerous causes of action
18 pending adversary proceeding.

19 And we submit, Your Honor, that there's no basis
20 to do that. There's no requirement to do that because what
21 we have here is a settlement of preference actions. The
22 benefit of those creditors who were offered that settlement,
23 who accepted it that's being implemented through the plan.
24 That's all it is. We could have waited to do this. We could
25 have made settlement offers with respect to preference

1 actions after confirmation. We did it here.

2 And as explained in Mr. Coverick's declaration, we
3 did it here for efficiency, to ensure that we were maximizing
4 the opportunity while we were going out to creditors to get
5 the waiver -- to get the stipulated amounts agreed, and to
6 not have to do another mailing to close to a million people
7 once we had these terms agreed to.

8 Those who are excluded doesn't mean that the
9 Debtor is never going to settle their preference claims. All
10 it meant is that the Debtors were not ready at this stage, at
11 the process when solicitation went out over this summer of
12 2024, to make that settlement offer at this time.

13 And so we would ask that this objection be
14 overruled, and that the plan, of course, be confirmed, and
15 that any issues with respect to the LayerZero parties be
16 addressed in the adversary proceeding in the context of that
17 litigation.

18 THE COURT: Can you address Mr. Sazant's argument
19 about 502(d), that courts in this district have said you
20 can't?

21 MR. GLUECKSTEIN: I can, Your Honor. So the
22 language that we have in the plan has been, as I noted in my
23 early remarks, has been included in numerous plans. And what
24 this idea, the context in which the cases that they're citing
25 to are different.

1 The questions there was in the context of
2 permanent disallowance, permanent disallowance for the
3 avoidance claims. That's what Judge Wallace was talking
4 about in those cases, prior to the avoidance actions being
5 fully resolved.

6 What we submit is the state of the law with
7 respect to 502(d), including in this district, and why the
8 language that appears in our plan has appeared in other
9 plans, not only by Your Honor, approved by Your Honor, but
10 other judges in this district, is that the plan language
11 serves as a temporary disallowance until the cause of action
12 is resolved.

13 Of course, if the creditor -- if the avoidance
14 action is resolved favorably to the creditor, then we no
15 longer have a basis to withhold the distribution, at least on
16 that grounds.

17 But until that claim is resolved in the underlying
18 litigation with respect to the adversary proceeding, it is
19 perfectly appropriate. It's consistent with the cases in
20 this district, and that's why, again, this language appears
21 in many plans for the Debtors not to pay out that
22 distribution until litigation is resolved.

23 Beyond that here, again, this is a situation
24 where, this is not a case where the creditor is standing here
25 saying that the plan provision is problematic and is

1 affecting their rights. We've asserted a Section 502(d)
2 claim in the adversary proceeding.

3 That claim is pending. It's there. They haven't
4 moved to dismiss that claim. They haven't moved to dismiss
5 that claim in the adversary proceedings, saying it can't be
6 maintained. They didn't move to dismiss it all. They
7 answered the complaint.

8 So, again, with respect to these parties, these
9 plan issues are manufactured. These aren't issues that
10 impact their rights in any way. There is a litigation that
11 is pending. That litigation needs to be resolved on its
12 merits in due course.

13 THE COURT: Okay. Thank you.

14 MR. GLUECKSTEIN: Thank you, Your Honor.

15 THE COURT: All right. I'm going to overrule the
16 objection. I think the Debtors are correct that this is a
17 separate settlement. It's not related to the plan itself.
18 The fact that they solicited through the plan to obtain
19 approval of the settlement from the creditors is not
20 something that would make this settlement a part of the plan
21 itself.

22 I think 1123(d)(3) allows for individual
23 settlements, and these are individual settlements on behalf
24 of the Debtors, who are the ones who are releasing their
25 claims against creditors, not the creditor releasing claims

1 against the Debtors. So there's no disparate treatment here
2 amongst the members of this particular class.

3 Under the 502(d) issue, I agree, again, with Mr.
4 Gluckstein that the cases that are cited by the defendants
5 here or the movants here relate to a permanent disallowance
6 of claims. This is a temporary disallowance until resolution
7 of the other claims against these particular creditors and
8 therefore does not violate 502(d), which explicitly allows
9 for temporary disallowance. So for those reasons, I will
10 overrule the objection.

11 MR. GLUECKSTEIN: Thank you very much, Your Honor.
12 I think that brings us to our last two objections, which I'm
13 just going to group together for efficiency, but fully
14 recognize they're separate objections. There are two
15 objections --

16 THE COURT: Mr. Shore -- so finish real quick.

17 MR. GLUECKSTEIN: The -- both of these are --

18 THE COURT: Hold on one second, Mr. Glueckstein.

19 Mr. Sazant, did you --

20 MR. SAZANT: I'm sorry, I didn't mean to
21 interrupt. But I just wanted to ask a question. We had also
22 raised the objection that Mr. Litan and Skip & Goose did not
23 meet the requirements to be excluded from the -- and you
24 didn't rule explicitly on that.

25 THE COURT: Right.

1 MR. SAZANT: So I just wanted to know --

2 THE COURT: Okay. And I will do so. I think as
3 Mr. Glueckstein explained, it wasn't the fact that the
4 complaint itself had been filed, the settlement is that the
5 Debtor can settle claims if they believe they don't have
6 anything other than a preference action against particular
7 defendants.

8 Mr. Glueckstein has indicated that they believe
9 they do have other claims against these two defendants and,
10 in fact, these are the only parties, as Mr. Glueckstein
11 points that have actually been sued. Others are also on the
12 list who haven't been sued yet.

13 So that's just part of the settlement process. So
14 I'll overrule that objection, as well.

15 MR. SAZANT: Thank you, Your Honor.

16 THE COURT: Mr. Adler? You're going to have come
17 forward because I'm not sure we're getting this on the
18 record.

19 MR. ADLER: I just want it to be clear that, Your
20 Honor, we haven't deal with the exculpation objection that I
21 made, so we have to come back to that at some point.

22 MR. GLUECKSTEIN: I don't know how we're coming
23 back. Your Honor, we addressed Mr. Adler's client's
24 objection. You heard argument from him on whatever points he
25 had open. You overruled his objection. I don't know what --

1 THE COURT: I think that was on the release --
2 third party releases. But is there a separate objection on
3 the exculpation clauses?

4 MR. GLUECKSTEIN: There is, Your Honor. Well, then
5 again, if Mr. Adler wants to address it, he should have
6 addressed it with his objection. If Your Honor is inclined
7 to hear it, then we should hear it.

8 MR. ADLER: I was getting up responding to Mr.
9 Glueckstein, who had raised the board fees and the crypto
10 (inaudible).

11 THE COURT: I'll give you the opportunity, Mr.
12 Adler. Do you want to -- Mr. Glueckstein, do you want to
13 deal with these last two first? I'll go back to Mr. Adler.
14 Do you want to just --

15 MR. GLUECKSTEIN: Sure, that's fine. That's fine,
16 Your Honor. The last two objections are objections that were
17 filed pro se by individual creditors, both very late,
18 including one that was filed just last week, days before the
19 hearing.

20 So defer to Your Honor whether the Court is
21 inclined to consider these very late objections in any event.
22 But I will address them. Individuals Samuel Gunawan and
23 Linda Favario, who both filed objections arguing that they
24 have rights in the Debtor's property akin to the customer
25 property arguments, variations of them that we have been

1 addressing and we addressed this morning and that are the
2 subject of the customer priority settlement.

3 These objections, Your Honor, merely selectively
4 quote from the FTX.com terms of service to claim some
5 ownership interest in the Debtor's assets.

6 As discussed earlier and in the record this
7 morning, the unrefuted evidentiary record established by Mr.
8 Mosley is that the Debtors immediately commingled any digital
9 assets deposited on the FTX exchanges in the ordinary course,
10 and the tracing of those assets to any customer would be
11 impossible.

12 Neither of these objections present any evidence
13 that they could trace any claimed assets to those held by the
14 Debtors. In addition, any customer who simply purchased,
15 traded, or sold or traded digital assets on exchanges never
16 had any tokens or coins in any account or in their possession
17 of control.

18 At all times, as Mr. Mosley makes clear, the
19 exchange assets were held in addresses and accounts owned and
20 controlled by the Debtors, and were commingled with the
21 Debtors and other assets.

22 Lord Neuberger, in his declaration, which was
23 admitted into evidence this morning, provides a very detailed
24 analysis of the relevant English law provisions and the law
25 that's relevant to the terms of Service, considered the terms

1 of service in that context, and ultimately concludes that the
2 FTX.com exchange customers are unsecured creditors. That
3 testimony is unrefuted.

4 Of course, as we've been discussing over the
5 course of the day today, the Debtors have, nonetheless,
6 agreed to the customer priority settlement, which benefits
7 customers with priorities of payments of assets being
8 distributed as set forth in the plan. So the settlement of
9 those claims and the benefits of that settlement are being
10 seen by all creditors, all customers, on account of their
11 claims as treated under the plan.

12 So to the extent that the Court is inclined to
13 consider either objection, we submit the Court should
14 overrule both of these objections on their merits.

15 THE COURT: Thank you. Are any of the -- yes, I
16 see Ms. Favario is on the line.

17 MS. FAVARIO: Yes, Your Honor.

18 THE COURT: Can you turn on your camera please,
19 Ms. Favario?

20 MS. FAVARIO: I'm doing it. Give me a second.
21 Sorry. Okay, here I am.

22 THE COURT: Thank you.

23 MS. FAVARIO: Thank you so much, Your Honor, for
24 giving me the chance to speak. My apologies, because English
25 is not my native language, so my English is a little bit

1 exotic. I will read my notes, so I will try to avoid to
2 waste your time just trying to argue my points. I will just
3 read my notes for being quick.

4 THE COURT: Can you first address the issue of why
5 you filed your objection late? It was past the deadline to
6 file objections.

7 MS. FAVARIO: Because I didn't know at all that I
8 could file an objection by myself without a lawyer. I don't
9 have money for paying a lawyer. And when I discovered was
10 too late. And I tried, simple as that. I just tried. And I
11 hoped that Your Honor could read it and the public could read
12 it. I'm sorry, I'm very naive. Bankruptcy is not my thing.
13 I'm learning. Actually, I'm learning a lot.

14 THE COURT: Unfortunately, yeah.

15 MS. FAVARIO: Yes. So in any case, I'm extremely
16 grateful for you give me the chance to speak. So I'm FTX.com
17 customers, and the money that I had on that platform was the
18 money I received as a compensation for a car crash that left
19 me disfigured.

20 When I was 19 years old, I had a 20 operation on
21 my face. Looks kind of okay now, but still full of scars.
22 So this money was the only the money that I had left after
23 the operation were the only thing, the only way to give me a
24 whole day age with dignity. Because I work as a life model.
25 So I earn between 15 and 20 pounds per hour. And this gives

1 me just a chance to survive with dignity, but not to pay
2 attention. So these money were my future.

3 When I saw them disappear under my eyes on the 11,
4 after the 11 November, I was first confused and disappointed
5 and then quite suicidal. I'm also neurodivergent. So if
6 things don't make sense, I just panic. And in that moment,
7 nobody was giving me any sort of answer. No one was giving
8 me any explanation.

9 Then at some point after about one year during the
10 winter 2023, I found this community on X that gave me some
11 answer. Mainly I found this community that breaks down quite
12 complex English -- U.S. bankruptcy documents and make it
13 understandable for people as me that they have a bad English.

14 So that I start to feel a little bit more relieved
15 about thinking, well, actually, maybe something positive can
16 happen. Then there has been the SBF trial and in the U.S.
17 criminal court, the U.S. Criminal court actually cited the
18 same FTX term of service. And the U.S. government
19 successfully argued that customer assets were not the
20 property of FTX, but instead the property of the customers.

21 But now the proposed plans seem to ignore the
22 original and ambiguous of service, framing the assets as a
23 part of the debt towards the estate. And I think to argue
24 now, after 22 months, that these assets are Debtor assets, I
25 don't know, seems inconsistent with the criminal court

1 findings and SBF conviction.

2 So the FTX.com term of service clearly and
3 unequivocally establish ownership rights and they say title
4 to your digital assets shall at all time remain with you and
5 should not transfer to FTX Trading. None of these digital
6 assets in your account are the property or of or should or
7 may be loaned to FTX Trading. FTX Trading does not represent
8 or trade digital assets in user accounts as belonging to FTX
9 Trading.

10 So this language seems to me quite clear. I
11 didn't need any explanation about these sort of things even
12 before when I start panicking. So this language seems quite
13 clear to me that the digital assets on the FTX.com belong to
14 the customer, not to the Debtors, and the term of service
15 grant to customer legal title to their assets.

16 So after 22 months, the Debtors have avoided these
17 most critical issues in the case, and it has not been
18 something that Your Honor has had the ability to rule on.
19 And that is important for the rule of law, I believe. It is
20 important for contract and property rights.

21 This court, I think for what is my understanding,
22 has not had the chance to rule on these, the most critical
23 issues in the case and as a result, hundreds of thousands of
24 customers have been left feeling helpless.

25 And let's remember that, as you can hear from my

1 beautiful, exotic English, a lot of customers, the majority
2 actually of them, they are not from U.S., and very often they
3 don't even speak English, so they don't have money left to
4 hire a lawyer to explain clearly what's going on in their
5 language, in a language that they can understand.

6 And finally, it seems kind of incredible that the
7 Debtors now claim that commingling of assets and poor record
8 keeping can override the explicit term of service that
9 establish ownership rights. Debtors may assert that the
10 failure to segregate assets justify treating customer assets
11 as a part of the estate, but this is a failure on their part,
12 not ours.

13 Under this plan, my contractual rights and my
14 ownership rights have been trampled. My property rights have
15 been disregarded. If the plan will be approved without
16 sorting out before the matter of term of service, and this
17 term of service will be ignored, the FTX bankruptcy will set,
18 I think, a dangerous practical precedent for property and
19 contractual rights.

20 Property rights is a human right. Right to
21 property is protected by the Fifth Amendment of the U.S.
22 Constitution that says no person should be deprived of life,
23 liberty, or property without due process of law, nor should
24 private property be taken for public use without just
25 compensation.

1 And last quote is from one of your founding
2 fathers, Thomas Jefferson, that in a letter wrote, the true
3 foundation of republican government is the equal right of
4 every citizen in his person and property and in their
5 management. Thank you so much for listening to me.

6 THE COURT: Thank you, Ms. Favario. And your
7 English is very good. Thank you.

8 MS. FAVARIO: Thank you.

9 THE COURT: Anyone else wish to be heard? Who's
10 online? Any other objectors? Okay.

11 MR. KYUSONG: Your Honor, if allowed, may I take
12 the floor?

13 THE COURT: Who's speaking, please?

14 MR. KYUSONG: My name is Eun Kyusong (phonetic)
15 from Advanced Legal PC who have assisted some Korean and
16 Korean-American unsecured creditors in this case.

17 THE COURT: Have you filed an objection to the
18 plan of reorganization?

19 MR. KYUSONG: No. Actually, a 75-year-old Korean-
20 American lady reached out to me last Friday. So I have some
21 concern to share with you. Is that okay?

22 THE COURT: Unfortunately, yes, it is. Because
23 we're way too late for new objections.

24 MR. KYUSONG: I will be brief.

25 THE COURT: No, it's not just about being brief.

1 It's about whether you have missed the deadline and waived
2 your right to it object or waived the right of whoever this
3 individual is to object. Number one.

4 Number two, I don't know that you are an attorney.
5 You say you're representing somebody, but you can't represent
6 someone unless you are an attorney and you have to have local
7 counsel. So there's all kinds of issues with the fact that
8 this was done late.

9 So unfortunately, I'm going to have to tell you
10 that I cannot hear you with regard to any issues that you
11 might want to raise. Okay?

12 MR. KYUSONG: I'm attorney in the registered New
13 York. In New York. And I'm speaking about my client based
14 on -- this is claim litigation. So your jurisdiction is
15 allowing attorney in other state to speak, right?

16 THE COURT: Well, if it's a claim litigation, you
17 can do that later. Right now we're dealing with plan
18 objections, and I don't have a plan objection from whomever
19 it is you are saying you represent. So at this point, I
20 cannot hear you. You'll have to wait until you get to the
21 claims administration process.

22 MR. KYUSONG: Okay. All right.

23 THE COURT: Thank you.

24 MR. KYUSONG: Thank you, Your Honor.

25 THE COURT: Let's see someone else raise their

1 hand. Mr. Uptegrove? Mr. Uptegrove, can you hear me? I
2 can't hear you. You can hear me, but I can't hear you.

3 MR. UPTEGROVE: Apologies, Your Honor. William
4 Uptegrove, on behalf of the United States Securities and
5 Exchange Commission. I just wanted to address our
6 reservation of rights that we filed. I can do that later,
7 but I just -- you were asking for people on Zoom that had
8 filed something, so I wanted to make sure that I raised my
9 hand before --

10 THE COURT: Only with regard to these objections,
11 but -- and I can tell you, reservations of rights are -- all
12 rights are always, always reserved. I don't need -- I don't
13 need parties to stand up and say I reserve my rights.
14 Otherwise, I'm going to be here for the rest of the afternoon
15 having people say we reserve our rights.

16 MR. UPTEGROVE: Yeah. Your Honor, we just wanted
17 to make clear for the record that we were -- what we put in
18 our reservation of rights that the SEC is not opining as to
19 the legality under the federal security laws of any of the
20 transactions outlined in the plan. That's all we wanted to
21 do. So thank you, Your Honor.

22 THE COURT: All right, thank you. Anyone else?
23 Okay, Mr. Glueckstein

24 MR. GLUECKSTEIN: Thank you, Your Honor. Just
25 really briefly, in response to Ms. Favario, we understand the

1 concern she's expressing, and we just want to be clear that
2 the Debtors here are distributing all of the assets of this
3 estate. We're distributing every asset that we are able to
4 find.

5 We are providing a waterfall plan that's going to
6 continue to allow assets to flow if we are able to bring in
7 more assets to augment this estate. As was outlined over the
8 course of the day, starting with Mr. Dieterich's remarks this
9 morning, we have a planned structure here that is as
10 favorable as we think we can make it.

11 We've done a lot of hard work to get there in
12 terms of trying to really maximize the recoveries to
13 customers, including with the settlements we've negotiated
14 that have allowed for the supplemental remission fund value
15 to potentially flow to those creditors as well.

16 So we understand the concerns. We do believe that
17 customers are being fairly compensated and then some, given
18 what we're able to accomplish under the Bankruptcy Code.

19 With respect to the specific objections to the
20 terms of service, customer property, those issues have been
21 conclusively addressed over the course of the hearing today.
22 The evidence in the record, including the conclusions on how
23 to interpret those from Lord Neuberger, are unrefuted.

24 The evidence before, Your Honor, we submit,
25 establishes not only that the 1919 settlement standard with

1 respect to the customer priority settlement is satisfied, but
2 that there is no evidence in the record to refute the Debtors
3 assertions with respect to the property propositions and the
4 terms of service interpretation as before the Court.

5 So with respect to the actual objection that was
6 filed, we do ask that that, as well as the objection from Mr.
7 Gunawan, who it seems is not appearing, be (inaudible).

8 THE COURT: Okay, thank you. All right, I am
9 going to overrule the objections. Ms. Favario, the Debtors
10 have put on evidence to show and made legal arguments to show
11 that the funds, regardless of what is included in the terms
12 of service, became property of the Debtor's estate once those
13 funds became commingled with everybody else's funds.

14 And in order to show that you would have a
15 particular interest in any particular piece of property,
16 including any particular cryptocurrency that you might have
17 on the exchange, it would require evidence of tracing to show
18 that the funds that you included or the crypto that you
19 deposited are directly traceable back to some particular
20 point in the Debtor's assets. And I don't have any evidence
21 of that.

22 So at this point, I think it is a foregone
23 conclusion at this point that the funds that were in the
24 accounts, despite what might be included in the terms of
25 service, are property of the Debtor's estate at this time.

1 All the crypto has been liquidated at this point.

2 If you have a claim and the Debtors are objecting
3 to your claim, you will receive a payment. We've had
4 referred testimony today and others have argued about how the
5 payments are going to be up to 130 and 140 percent of the
6 value of your claim based on what it was at the time of the
7 filing of the bankruptcy.

8 So for those reasons, Ms. Favario, I'm going to
9 overrule your object.

10 MR. GLUECKSTEIN: Thank you, Your Honor. Just so
11 the record is clear, is the Court also overruling Mr.
12 Gunawan's objection?

13 THE COURT: Yes, and Mr. Gunawan's objection as
14 well.

15 MR. GLUECKSTEIN: Okay, thank you. That's from
16 the Debtor's perspective, I thought we could address all the
17 objections. I understand Mr. Adler thinks there's an
18 outstanding issue. To the extent Your Honor is inclined to
19 hear that, or anybody else who thinks there are outstanding
20 objections, I think we're at that point of the day.

21 THE COURT: Okay. Let's go to Mr. Adler and hear
22 his objection on the exculpation provision.

23 MR. ADLER: Good afternoon, Your Honor. David
24 Adler from McCarter & English on behalf of the (inaudible)
25 parties (inaudible). We objected on August 16th to the

1 exculpation provision under both the plan and the litigation
2 for the plan administration agreement, for the FTX recovery
3 trust.

4 I've taken a look at the changes that have been
5 made to Section 10.7 of the plan, and they have put in the
6 language that limits the exculpation to the petition date to
7 the effective date. I think there might be a typo because at
8 the end in (c), it just references the effective date but not
9 occurring on or after the petition date.

10 I do think that it would be -- we said it in our
11 objection that exculpation should be limited to the committee
12 and the Debtor and no other parties. To the extent the Court
13 wants to include other parties, we think it might be helpful
14 to have a list somewhere as a plan supplement of exculpated
15 parties so that everyone knows who's being exculpated. That
16 was on the plan.

17 On the litigation on the plan administration
18 agreement, paragraph 8. And this is from document 262262,
19 filed on October 3. I'm on page 4 of 9. Paragraph 8 is
20 exculpation. And I had asked during the examinations one of
21 the witnesses about the plan administrator.

22 Paragraph 8 is giving the plan administrator, who
23 does not yet exist, an exculpation. And when you read this
24 provision of the agreement, this amounts to essentially an
25 advance waiver, advance release.

1 So we're going to rely on Mallinckrodt, Your
2 Honor, that basically, Your Honor ruled that entities that
3 don't exist, you know, at the time the plan is confirmed, are
4 not entitled to the benefit of exculpation. And we think
5 that paragraph 8, which is essentially advance release,
6 should be stricken from the -- from the FTX recovery -- from
7 the plan administration agreement.

8 THE COURT: Okay, thank you.

9 MR. ADLER: Thank you.

10 THE COURT: Mr. Glueckstein? Do you need a
11 minute?

12 MR. GLUECKSTEIN: Your Honor, instructing
13 exculpation 10.7 of the plan, as Mr. Adler correctly notes,
14 we have revised that language in consultation with the U.S.
15 Trustee's Office with respect to the scope of that provision.
16 They were comfortable with it. We don't believe that a list
17 of people needs to be included with that. This language is
18 standard language that's included, the Court has included
19 frequently to pick up the title types of professionals and
20 advisors, representatives that are exculpated. The
21 definition of exculpated parties is contained in the plan.

22 So from our perspective, the language as revised
23 in response to the U.S. Trustee complies with all legal
24 obligations and should be approved.

25 With respect to the form of the plan

1 administration agreement, that is, you know, that is
2 disclosed, and the plan supplement is ultimately an agreement
3 that is going to be entered into and executed by the Debtor's
4 recovery trust in Allen Hill (phonetic). And the terms of
5 that are negotiating a contract from the perspective of not
6 only the plan administrator, but of the Debtor's perspective
7 of setting up the recovery trust, we think that the terms,
8 including an exculpation provision in this agreement, is in
9 the business judgment of the Debtor is appropriate, and so
10 they intended to move forward with it.

11 We are, of course, asking for approval of the form
12 of the agreement on behalf of the current Chapter 11 Debtor,
13 but it is contemplated to be a three-way agreement that will
14 govern only post-effectiveness activities.

15 THE COURT: Can I see a copy of that section? I
16 don't have it in front of me?

17 MR. GLUECKSTEIN: Yes, Your Honor. May I
18 approach, Your Honor?

19 THE COURT: Yes, please.

20 MR. GLUECKSTEIN: Section 8.

21 THE COURT: Okay. Thank you. Anything else?

22 MR. GLUECKSTEIN: No, Your Honor. Well, the only
23 thing I would just to -- so the record is complete, we of
24 course, are asking for approval of the form of these
25 agreements on behalf of the Debtor so that they could be

1 moved forward and executed on.

2 They're not -- we're obviously not prejudging
3 anything that's going to happen or conduct of anybody or any
4 actions taken by the plan administrator post-effectiveness.
5 Of course, if somebody believes that there is something that
6 gives rise to a claim, they would have the ability to bring
7 that at the appropriate time.

8 THE COURT: Okay. All right. I'm satisfied from
9 reading that language. I think it's appropriate at this
10 point. It's only a proposed agreement that has not yet been
11 executed and is subject to, I presume, negotiation once the
12 plan administrator is identified. So I will overrule the
13 objection.

14 Also, under the exculpation under the plan, I
15 think is also appropriate based on the U.S. Trustee's
16 revisions that they requested, I think those are appropriate,
17 and therefore I will also overrule that objection.

18 Anything else, Mr. Glueckstein?

19 MR. GLUECKSTEIN: No, I don't. Unless there are -
20 - I guess we just confirm that there are no other outstanding
21 objections that the Court has not addressed.

22 THE COURT: Okay. Did we miss any of the
23 objections from anybody? Going once, going twice. Okay. No
24 one has spoken, so I guess we are done with objections.

25 MR. GLUECKSTEIN: Okay. I had a couple comments

1 with respect to the order, Your Honor, but I think I really
2 want to address that now or after.

3 THE COURT: Do we have -- I'm sorry, I couldn't
4 hear you.

5 MR. GLUECKSTEIN: I'm sorry. Sorry, Your Honor,
6 just two things with respect to the Debtor's proposed form of
7 order. I have one and I think Mr. Dietderich has one that's
8 just been coming in as things are evolving here.

9 I just wanted to note for the record, we were
10 asked to note for the record by the U.S. Department of
11 Justice that there are provisions that we have included in
12 the plan that were negotiated. Sorry. In the confirmation
13 order that are negotiated provisions starting with Section
14 153, paragraph 153 of the order that were multi-agency
15 negotiations amongst the DOJ and other the various
16 governmental units that resolved any concerns any of those
17 government entities had.

18 So that's why they're not here today. They asked
19 us to put that on the record, and I think Mr. Dietderich has
20 one late point on the board.

21 MR. DIETDERICH: Thank you, Mr. Gluckstein. Your
22 Honor, one last --

23 THE COURT: Can I call you Mr. Glueckstein just to
24 make it even.

25 MR. DIETDERICH: Thank you, Mr. Dieterich. Yes,

1 Your Honor, one last comment also from our -- from the
2 federal government, back to my earlier remarks. There's a
3 few creditors that have raised a question about language
4 recently added by the SEC. It's Section 154, the proposed
5 form of order.

6 That language says that beneficial interest in the
7 consolidated wind-down trust will not be certificated and
8 cannot be transferred, sold, pledged, or otherwise disposed
9 of or offered for sale. This language is intended, of
10 course, to address the application of the U.S. securities
11 laws and came from the Securities and Exchange Commission.

12 I just wanted to note for the record, in response
13 to some of these creditor inquiries, it is not intended to
14 prevent the ordinary operation of the claims trading market.
15 And of course the Debtor will honor claims trades and make
16 distributions to the applicable holders of claims on the
17 record dates as otherwise provided in the plan.

18 THE COURT: Okay.

19 MR. DIETDERICH: And that's it.

20 THE COURT: Did the SEC want to have anything to
21 say about that one? Anyone here for the SEC or online? Mr.
22 Uptegrove?

23 MR. UPTEGROVE: Yes, Your Honor. William
24 Uptegrove for the United States Securities and Exchange
25 Commission. Counsel is absolutely correct, though we concur

1 with what he restated on the record.

2 THE COURT: Okay, thank you.

3 MR. DIETDERICH: Thank you, Mr. Uptegrove.

4 THE COURT: All right, anything else?

5 MR. DIETDERICH: That concludes our presentation.

6 THE COURT: All right, well, I guess we've
7 resolved all the objections, so I will approve the plan of
8 reorganization.

9 I do want to take a look at the proposed form of
10 order, revised form of order, because it came in early this -
11 - or, you know, late this morning, actually just a little
12 less than an hour before the hearing. So I want to take a
13 look at it. I will take a look at that. Is that the final-
14 final version or are we going to have other potential
15 changes?

16 MR. DIETDERICH: It's final-final.

17 MR. GLUECKSTEIN: That's it, Your Honor. And that
18 has limited changes that address primarily language we agreed
19 to add on the disputed claims reserve, which I addressed this
20 morning, formalizing the fact that we filed a motion on that.
21 (Inaudible), but we'll obviously let Your Honor take a look
22 at it.

23 THE COURT: All right, I'll take a look and as
24 soon as I get through it, we'll get it entered for you.

25 MR. DIETDERICH: Thank you very much, Your Honor.

1 THE COURT: Thank you. Well, I just want to say
2 congratulations, and I think this is a model case for how to
3 deal with a complex, very complex Chapter 11 bankruptcy
4 proceeding. And I applaud everybody who was involved in the
5 negotiation process and resolving of objections and getting
6 this down to just a few plan objections at the time of the
7 hearing.

8 I think you did -- you all did a lot of hard work
9 and I greatly appreciate it. So thank you all very much.

10 MR. DIETDERICH: Thank you.

11 THE COURT: Okay. I guess that's it for the these
12 Debtors today, right? Do we have anything else?

13 MR. LANDIS: Thank you, Your Honor. For the
14 record, Adam Landis from Landis, Rath & Cobb. Seems a little
15 anticlimactic, but we do have a number four item on our
16 agenda, which is the Celsius litigation administrator's
17 motion for relief from the automatic stay. We've listed all
18 the responses received, and also there's a similar motion in
19 the Chapter 15 case that has been filed.

20 THE COURT: All right, that one I'm going to
21 continue to hold in abeyance until I rule on the issue of
22 whether or not Celsius has an appropriate claim or not. I
23 think it would be premature at this point to have argument on
24 lifting the stay until I know whether there's something lift
25 the stay for.

1 MR. LANDIS: We were at pains to list this on the
2 agenda, Your Honor, but the Debtors certainly appreciate you
3 are adjourning that until the underlying matter is resolved.

4 THE COURT: Okay, thank you.

5 MR. LEVY: Your Honor. Richard Levy for the
6 Celsius litigation administrator. I was in the back of the
7 room and unfortunately could not hear you clearly when you
8 spoke to Mr. Landis.

9 THE COURT: I was saying that because I still
10 haven't ruled on the issue of whether or not the claim that
11 you filed is appropriate or not. I'm going to hold this in
12 abeyance until I make that ruling, and then we'll have -- so
13 I know whether I even need to have a hearing on whether to
14 lift the stay. And then we'll go from there so.

15 MR. LEVY: So that, Your Honor, would relate only
16 to the U.S. cases. We still have the Chapter 15 case.

17 THE COURT: We'll deal with that. Are we dealing
18 with that with your agenda, Mr. Shore?

19 MR. SHORE: Yes, Your Honor.

20 THE COURT: Okay, so we'll deal with that when we
21 get to Mr. Shore's agenda.

22 MR. LEVY: I didn't hear Mr. Shore.

23 THE COURT: He said yes. That's on the agenda for
24 discussion in connection with that case as opposed to --

25 MR. LEVY: So that's going to be carried to

1 another date as well?

2 THE COURT: No, no, we're going to talk about it
3 today once we get to it.

4 MR. LEVY: Okay. Sorry, Your Honor. Thank you.

5 THE COURT: No problem.

6 MR. LANDIS: Your Honor, again, for the record,
7 Adam Landis of Landis, Rath & Cobb, on behalf of the Debtors.
8 That does conclude the agenda for the FTX Trading case today.

9 THE COURT: Okay, thank you, Mr. Landis.

10 All right, Mr. Shore.

11 MR. SHORE: Well, Your Honor, we have only one
12 thing on -- again, Chris Shore from White & Case for the
13 Chapter 15 Debtor.

14 We have only one item on the agenda today, which
15 is the lift stay motion, and I would just turn over, unless
16 Your Honor wants to take a break, turn over the podium to the
17 Celsius administrator, and they can make their argument, and
18 I will respond.

19 THE COURT: Okay. Do we have any evidence on this
20 issue or is it all legal argument?

21 MR. SHORE: We had put in the evidence at the last
22 hearing with respect to the other declarations. The Celsius
23 administrator, I believe, wants to move in one objection or,
24 sorry, one sur sur reply declaration. And I'd like to be
25 heard on that when we address it.

1 THE COURT: Okay. So no new evidence from the
2 joint administrators?

3 MR. SHORE: Correct.

4 THE COURT: Okay, thank you. All right. Mr.
5 Levy?

6 MR. LEVY: Good afternoon, Your Honor. Richard
7 Levy, Pryor Cashman for the Celsius litigation administrator.
8 As a preliminary matter, Your Honor --

9 THE COURT: Now I'm having trouble hearing you,
10 Mr. Levy, can you pull him a little closer? Try it there and
11 see if that works.

12 MR. LEVY: Is that better?

13 THE COURT: That's better, yes. Thank you.

14 MR. LEVY: Thank you, Judge. Sorry, Your Honor.
15 You have trouble hearing me, I have trouble hearing you, and
16 I have a hearing problem, which makes it all -- I apologize,
17 Your Honor.

18 THE COURT: We'll get through it.

19 MR. LEVY: Your Honor, as a preliminary matter, to
20 complete the evidentiary record at the last hearing, Your
21 Honor granted us an opportunity to file a sur reply affidavit
22 declaration from -- excuse me -- from Bahamian counsel, which
23 we did at Docket No. 190. The affidavit of the declaration
24 of Tara Cooper Burnside, a member of the firm of Higgs &
25 Johnson in the Bahamas. And I can proffer that, Your Honor,

1 if you need anything more than a simply --

2 THE COURT: No, I've seen it. So let me just ask
3 you, Mr. Shore, are you objecting to (inaudible)?

4 MR. SHORE: I do have an objection to a couple of
5 paragraphs. I can either address that now or let counsel go
6 and just carry that objection. I just ask you to strike, I
7 think, five paragraphs.

8 THE COURT: All right, let's leave -- you finish
9 up, and then we'll go from there.

10 MR. LEVY: Thank you, Your Honor. Your Honor,
11 when we were here a couple of weeks ago, we began the
12 discussion of whether or not this application should be
13 granted relief from the stay by Your Honor with respect to a
14 proposed subsequent transferee litigation against the Celsius
15 -- excuse me -- against the FTX U.S. -- the FTX DM. I
16 apologize, Your Honor. I'm trying to find ones that are
17 (inaudible). I apologize.

18 THE COURT: Take your time.

19 MR. LEVY: Picking up from where we were, Your
20 Honor, at that time. Your Honor, I've left this out of my
21 notes back at my seat. May I go back?

22 THE COURT: Certainly.

23 MR. LEVY: Thank you, Judge. Your Honor, can I
24 ask for the Court's indulgence? Could we have a five-minute
25 break while I get everything in order?

1 THE COURT: Sure. Let's make it ten, and we'll
2 come back at 3:30.

3 MR. LEVY: Very good.

4 THE COURT: Thank you.

5 (Off the record at 3:22 p.m.)

6 (On the record at 3:31 p.m.)

7 THE BAILIFF: All rise.

8 THE COURT: Thank you. Please be seated. I
9 forgot something. All right.

10 MR. LEVY: Is this good? Judge, can you hear me
11 here?

12 THE COURT: Yes. Thank you.

13 MR. LEVY: Judge, Richard Levy for Pryor Cashman
14 in behalf of the Celsius litigation administrator. Thank you
15 for the break, Judge. I appreciate that.

16 To finalize the admission of Ms. Cooper's -- Ms.
17 Burnside's declaration, Judge, I believe she is on the line.
18 Both parties, I understand, have waived or the other party
19 has waived cross examination. But if the Court has any
20 questions, she will be available.

21 THE COURT: Okay, so we resolved the issues that
22 Mr. Shore wanted to strike some of the declaration?

23 MR. SHORE: No, but that does not require any
24 cross examination to establish.

25 THE COURT: Okay, so I'll -- the declaration is

1 submitted without objection, then, subject to Mr. Shore's
2 wanting to strike certain provisions.

3 MR. LEVY: Judge, when we were here last time, you
4 were asking the question why should you be deciding this
5 matter? The submission by Ms. Burnside makes clear why you
6 should be deciding it. And I will further amplify why you
7 should be deciding it and why you should be deciding it now.

8 To put a finer point on it, even with our having
9 filed lift stay motions in both the United States and
10 Bahamian courts, we are bound to do so because we're dealing
11 with dueling Debtors in both of those jurisdictions. Because
12 there are Debtors on both sides of the aisle, lift stay
13 relief is required from both of those courts. We need relief
14 from this court in order to sue in our United States claims
15 because we seek to pursue a judgment under the United States
16 Bankruptcy Law in a United States Bankruptcy Court.

17 Now, we filed a proof of claim in the Bahamas
18 because we had to in order to participate in the Bahamas case
19 if we wanted to receive a distribution in that case.

20 However, Your Honor, as was pointed out in the
21 proof of debt filed as Joint Official Liquidator's Exhibit 4,
22 we make very clear that instead of submitting to the
23 jurisdiction of the Court for purposes of determination of
24 our claim by the Joint Liquidators, we are asking for relief
25 from the stay in order to proceed with a proceeding, a court

1 adjudication of the issues that we have raised in our draft
2 complaint which arise under Sections 547 and 550 of the
3 United States Bankruptcy.

4 While we may have submitted to the jurisdiction of
5 the court in the Bahamas for various purposes, that does not
6 mean that the United States lift stay proceeding cannot or
7 should not go forward. The fact that the -- excuse me -- it
8 cannot go forward. And in fact, as a practical matter, it
9 should. Let me explain why.

10 To the extent that we seek to proceed on our proof
11 of debt through a proceeding and not through Joint Official
12 Liquidators' adjudication, we need an indication from both
13 courts that we can do so.

14 Your Honor would be asked in the first instance to
15 grant relief from the automatic stay so that we can pursue
16 the litigation. We know we have to go back to the Bahamian
17 court. We have a lift stay proceeding already pending in
18 that court. It's not teed up anywhere near we are in this,
19 but if Your Honor were to grant us relief, we think that that
20 would have exceedingly probative value for the Bahamian court
21 for this reason.

22 We are asking for relief under United States
23 Bankruptcy Law. That's something that's relatively alien in
24 my understanding. And I think Ms. Burnside could probably
25 amplify this. U.S. preference law, bankruptcy law, is not

1 something that comes before the Bahamian courts with any
2 regularity. They deal with local law. But we're asking for
3 a proceeding to happen here in the United States where the
4 Bahamian state does not even apply.

5 But be that as it may, we need both courts to say,
6 yes, go ahead and proceed. And we believe it would be more
7 efficient for Your Honor to make the initial ruling which
8 says, hopefully, yes, you can proceed with your United States
9 preference claim.

10 I want to know for sure that the Bahamian court
11 will go along with that. And that may take a while because
12 the Bahamian system is somewhat slower than Your Honor's
13 courtroom.

14 It would be very similar, Your Honor, in a
15 situation I talked about last time I was here where a court
16 facing a lift stay proceeding says, yes, I want to let
17 another court handle the determination of the claim, the
18 adjudication allowance, the liquidation of the claim. That's
19 effectively what we are asking the Bahamian court to do.

20 But I don't think the Bahamian court will be as
21 influenced on whether or not to grant that relief, unless
22 Your Honor tells us, which we ask, that, yes, you can proceed
23 on it here. And frankly, Your Honor, the United States
24 courts are way more familiar with American bankruptcy.

25 It's hard to believe that a Bahamian court not

1 well versed in American bankruptcy law would take unto itself
2 that determination.

3 On the flip side, as I said, it makes sense for a
4 Bahamian law based controversy to be decided. It makes sense
5 for a Bankruptcy Law-based controversy to be decided by the
6 United States court that's fully versed in the body of law.

7 Now, Your Honor, in her declaration, Ms. Roll
8 (phonetic), her sur reply declaration, Ms. Roll suggested
9 that it was doubtful, and I use that word doubtful that a
10 Bahamian court would recognize a claim based on Sections 547
11 and 550 because Bahamian preference law is different.

12 That's not the point. The point is a claim
13 predicated on United States Bankruptcy Law which we request
14 to be adjudicated in the United States and then taken back to
15 the Bahamian court for consideration in connection with the
16 allowance of our proof of debt, that's what matters. We're
17 asking for the Bahamian court, hopefully with Your Honor's
18 prior approval that we can proceed with an American
19 bankruptcy litigation. The Bahamian court will say sure, go
20 ahead and do that. Come back and see me in the Bahamas when
21 you've got your case completed.

22 Your Honor, in effect, doesn't have to do anything
23 more today other than say yes, you can proceed under the
24 automatic stay. We know we have to deal with the Bahamian
25 court before we can go farther with where we are.

1 To be clear, we recognize that at the end of the
2 process, we have to bring any U.S. judgment back to the
3 Bahamian court in order to participate in the proceeding at
4 that time. We are not trying to do an end run around the
5 Bahamian court, and we are certainly not trying to do
6 anything untoward in this court. We are simply asking for
7 what is our right, I believe, under the circumstances, relief
8 from the automatic stay.

9 Now there are good and plenty reasons why Your
10 Honor should do that, in addition to the fact that a Bahamian
11 court is not a court of U.S. Bankruptcy Law. What we have
12 asked for is permission to proceed in front of Judge Glenn in
13 New York for a couple of reasons.

14 He is well versed in the proceedings. He has all
15 of the experience in the Celsius case. He has all of the
16 Celsius proceedings centralized before him. It would be
17 efficient for that court to continue to hear all matters
18 relating to that proceeding. And once again, Judge, we still
19 have to go back to the Bahamas if and when we prevail in that
20 proceeding.

21 I think, Judge, that's about all I need to say at
22 the moment unless Your Honor has questions.

23 THE COURT: I just want to be clear what relief
24 you're asking me for. You want me to lift the stay? Say
25 yes, I'm going to lift the stay to allow you to proceed with

1 your adversary proceeding in New York.

2 MR. LEVY: Yes, Your Honor.

3 THE COURT: So why -- I mean, this is a Bahamian
4 entity that's in a liquidation proceeding in the Bahamas with
5 assets located in the Bahamas. Number one, why does U.S.
6 Bankruptcy Law even apply? And number two, why should I --
7 why shouldn't I allow the Bahamian court to decide whether
8 they want to hear it or whether they want Judge Glenn to hear
9 it?

10 MR. LEVY: This is not a usual ancillary
11 proceeding. This is a case now that involves a Chapter 11
12 plan under which distributions are going to be made to the DM
13 customers with U.S. assets based on transactions that those
14 parties engaged in. Celsius was a U.S.-based entity. The
15 transfers came from U.S.-based entities.

16 As we pointed out, Your Honor, the judge in New
17 York has made various determinations and is administering the
18 stay and that's where we submit it should be determined.

19 I'm not asking Your Honor to do anything more
20 today than say, yes, you can proceed. Just make sure you do
21 it right with the Bahamian court. And I believe, Your Honor,
22 that a Bahamian court may have some question about whether or
23 nothing not to allow a proceeding under U.S. Bankruptcy Law
24 to proceed separately than the proceeding there. But a
25 Bahamian judge doesn't deal with bankruptcy every day.

1 THE COURT: Well, why can't I just say, okay, I'll
2 lift the automatic stay but it's up to the court in the
3 Bahamas to decide whether they're going to hear it or Judge
4 Glenn is going to hear it?

5 MR. LEVY: Not exactly what I anticipated to hear
6 from Your Honor. That certainly gets us over the first
7 hurdle, which is to get relief from the automatic stay
8 subject to our going to the Bahamian court to make a further
9 determination.

10 I believe, Your Honor, that recognizing what I
11 will call the primacy of U.S. Bankruptcy jurisdiction, it's
12 better for a U.S. Bankruptcy Court to be hearing it, even if
13 Your Honor grants us that relief. I can't tell you that the
14 behavior court is going to say, no, I'm not going to let you
15 go back to New York. At least let us have the relief that
16 we've asked subject to going to the Bahamas and doing what we
17 have to do next.

18 THE COURT: And again, I don't know if you
19 answered my question. Maybe you did. I just didn't catch
20 it.

21 MR. LEVY: I'm sorry Judge. I didn't hear you.

22 THE COURT: I have -- one of my questions that I
23 asked, I'm not sure. You may have answered it and I just
24 didn't catch it. But why does U.S. Bankruptcy Law apply to
25 Celsius's claims against a Bahamian entity in the Bahamas?

1 MR. LEVY: The transfers came from Celsius, a
2 United States-based entity.

3 THE COURT: Well, they came -- these, again, are
4 the same type of situation where customers withdrew funds,
5 pre-petition and then deposited them in the Bahamas?

6 MR. LEVY: I can't say that for sure, Judge. I
7 don't know all those details. I do know that the money came
8 out of Celsius United States. That took --

9 THE COURT: Kind of an important issue.

10 MR. LEVY: Pardon me?

11 THE COURT: Kind of an important issue to know.

12 MR. LEVY: It is, Judge. And as far as I'm
13 concerned, Judge, the 500 or so cases, the transfers emanate
14 from the United States. That's a basis for jurisdiction just
15 as it's a basis for bankruptcy venue. Where are the assets
16 located. Here, the transfers came from the United States.

17 THE COURT: But the assets, from what I
18 understand, and maybe you can correct me if I'm wrong and Mr.
19 Shore will address it too, the assets, as far as I
20 understand, are in the Bahamas. That there's this joint
21 agreement between the U.S. Debtors and the Bahamian Debtors
22 that a claimant can say I want my claim decided in the U.S.

23 MR. LEVY: Well, that's an interesting question,
24 Your Honor, because I don't think any of us knows yet exactly
25 how many entities who were claimants accepted U.S.

1 jurisdiction versus Bahamian court jurisdiction. That's
2 something that may have to get sorted out.

3 But let me posit this to Your Honor. Your Honor
4 grants us leave from the automatic stay and says, go ahead,
5 go litigate in front of Judge Glenn. Judge Glenn hears the
6 proceeding on the initial claims that have left -- that left
7 Celsius and are now in the hands of the former Celsius
8 customers who are FTX customers.

9 We get a judgment. We get a judgment saying
10 you're right. You now have initial transfers that have been
11 avoided. They were avoided in the United States -- based on
12 United States law. We have to go back to the Celsius court.
13 We have to ask for permission to enforce that judgment in the
14 Bahamian proceeding, and we will continue to pursue our
15 subsequent transfer remedies against anybody anywhere who is
16 subject to jurisdiction.

17 THE COURT: All right. Okay. Let me hear from
18 you.

19 MR. LEVY: Your Honor, I'll reserve in case you
20 have further questions.

21 THE COURT: Thank you.

22 Mr. Shore?

23 MR. SHORE: Thank you Your Honor. Chris Shore
24 from White & Case on behalf of the JOLs.

25 As I said, I have one evidentiary issue, and then

1 I want to address each of Your Honor's questions that you
2 just asked. Let me deal with the evidentiary issue first.

3 We ended last hearing with the Court authorizing a
4 sur reply, no question. And I stood up and I said I want to
5 make clear this is a sur reply to address the issues that
6 were raised for the first time in the sur reply of Ms. Roll-
7 Capp. Nobody said anything otherwise.

8 Then we got the Burnside declaration, and we
9 object to paragraphs 6 through 11 as improper sur sur reply
10 and ask the Court to strike them. These paragraphs concern
11 the jurisdictional scope of the Bahamian stay and how it
12 applies to claimants in the Bahamian proceedings.

13 Let me set up the record on this first to explain
14 why I think this issue should have been raised long before
15 last week when they filed this sur reply. Celsius filed its
16 motion on June 5th. It's Docket 155 in the 15. The JOLs
17 filed their opposition on July 8, which included two
18 declarations that the declaration of Ms. Roll-Capp, which is
19 in evidence, was at 166.

20 At paragraphs 7 through 12 of that declaration,
21 which was filed in July, Ms. Roll-Capp describes the effect
22 of the Bahamas stay on Celsius and she concludes at paragraph
23 11, if the Celsius litigation administrator has claims
24 against FTXDM, Bahamian law requires that he first seek to
25 lift the Bahamas stay or seek leave from the Bahamas court.

1 That was a -- evidence that was submitted to the Court on
2 July 8th.

3 On September 4th, Celsius filed its reply at
4 Docket 173 in the 15, and that response is silent as to the
5 lift stay point. They did not attempt to, at that time,
6 rebut anything that was said in Ms. Roll-Capp's declaration
7 with respect to the extent of the stay. Five paragraphs.

8 Then on September 10th, we filed the supplemental
9 Roll-Capp declaration at 181. In one paragraph, paragraph 5,
10 Ms. Roll-Capp declares, as I stated in my initial
11 declaration, and she summarizes what she said, which was to
12 emphasize the point of the following paragraphs, which is
13 that, having read our opposition, Celsius decided to actually
14 go seek lift stay not until September, as opposed to seeking
15 stay from this court in July.

16 So now on September 4th -- or no, sorry, not at
17 September 4th -- Ms. Burnside seeks to establish that the
18 stay only applies in the Bahamas. That was testimony that
19 should have been provided in connection with the reply. It
20 is not appropriate to have it come in as sur sur reply at
21 this point.

22 And I want to make clear why the record needs
23 protecting here from just people lobbying in new stuff at the
24 last second. In the paragraphs at issue, Ms. Burnside quotes
25 extensively to Vocaline (phonetic). In that block quote,

1 that court made clear, this is not the case where the person
2 sought to be restrained from proceedings abroad has made
3 himself a party to the proceedings, such as, for example,
4 filing a proof of claim.

5 But this case is that case. We're not dealing
6 with what happens, what is the extent of a stay in a case in
7 which the party has not submitted to the jurisdiction. We're
8 dealing with a case in which the party has submitted
9 jurisdiction.

10 So just as Mr. Levy came last time with --

11 MR. LEVY: Levy.

12 MR. SHORE: Levy. Sorry. Came with his own
13 cases, we could go back and forth all day. I've got the
14 cases here that deal with the instance in which a party has
15 submitted to the jurisdiction of the Court, and they stand
16 for the obvious proposition.

17 If you go into a court and you seek to have your
18 claim adjudicated in that court, which is trying to provide
19 radical distribution to all, you're not free to just go
20 around the world and seek to have dozens, hundreds of other
21 courts adjudicate your claim without seeking relief from the
22 court to which you submitted your claim.

23 So the point, the whole point here is I think you
24 should just strike 6 to 11. The record exists as it existed
25 when the opposition to the motion was submitted months ago.

1 THE COURT: Okay, let me ask Mr. Levy if he wants
2 to respond to that.

3 MR. LEVY: Sure, Your Honor. I note, Your Honor,
4 that in as much as Mr. Shore wants to remove those
5 paragraphs, he's arguing from them even before we've gotten
6 to that point. Your Honor, this was an affidavit by Ms.
7 Burnside to explain the full panoply of what she perceives to
8 be the issue here. Whether Your Honor can rule, whether the
9 Bahamian court should rule.

10 I dispute the question of whether or not this is
11 something that needed to be -- needed to be handled
12 previously. We got Ms. Burnside. Ms. -- sorry, Ms. Roll's
13 supplemental affidavit two days before the hearing. The key
14 issue was now in front of Your Honor at that hearing as I
15 started to present cases and Your Honor said, I need to hear
16 more. I need to understand what's going on. And we said we
17 would not go beyond the confines of Ms. Roll's supplemental
18 declaration. We have not done that, Judge.

19 We have limited ourselves to Ms. Roll's
20 supplemental declaration, the points that were made, and
21 these are important points, Your Honor, in considering which
22 court has jurisdiction or should have jurisdiction to act
23 first. We think the provision should remain before the
24 Court.

25 THE COURT: Mr. Shore?

1 MR. SHORE: I'm not disputing they're important
2 points. All I'm saying is if they had an important point to
3 make, it should have been made in the normal sequence in
4 responding to the objection which was filed months ago, not a
5 week before the hearing.

6 THE COURT: All right, I'm not going to strike
7 them, but I'll take them for what they're worth. I did read
8 the declaration, so I'm familiar with what Ms. Burnside had
9 to say. So we'll just leave it at that for now.

10 MR. SHORE: Okay. I have two points to make on
11 the objection to lift the stay in the Chapter 15 recognition
12 order. One is the question of sequencing. Which court
13 should decide the two pending lift stays, first? And second,
14 the lack of cause at this point to lift the stay in the 15.

15 Point one, we believe this court should let the
16 Bahamas court decide first where the Celsius avoidance claim
17 gets liquidated and then have this court follow on at a later
18 date. Either leave the stay in place or follow the direction
19 of the Bahamian court.

20 And I want to start with the actual state of play
21 because I think it's kind of getting lost, and it gets
22 sometimes lost because these motions were -- or the companion
23 lift stay against the U.S. Debtors was pending.

24 FTXDM has an ongoing liquidation in the Bahamas,
25 which is the recognized foreign main proceeding with the JOLs

1 as recognized foreign representatives. The Celsius
2 administrator contends that he has claims against FTXDM, not
3 against the U.S. Debtors. That's the subject of the late
4 claim, but against FTXDM based upon these alleged facts.

5 During the Celsius preference period customers of
6 Celsius directed that Celsius move their crypto and cash in
7 excess of \$350 million to accounts at either the U.S. Debtors
8 or FTXDM in the name of those customers that were listed in
9 that sealed spreadsheet.

10 Wherefore, the Celsius administrator argues, FTXDM
11 is liable to him for those transfers as a subsequent
12 transferee. Okay. And now he's filed that claim in the
13 Bahamian liquidation. That is, the liquidator has asserted a
14 proof of claim for monies that he alleges were transferred to
15 FTXDM accounts for customers removing their cash and crypto
16 from the Celsius platform during the preference period.

17 But he's insisting that rather than having the
18 Bahamian court liquidate that claim, he should be able to
19 liquidate that claim in the New York Bankruptcy Court.

20 We oppose and believe that the claim must be
21 liquidated in the Bahamas, and here's the current state of
22 play. I think we all agree that two courts must act. This
23 court must lift the Chapter 15 stay that's applicable to
24 Bahamian court to lift its stay. Or, and I want to pause
25 here, address a supplemental anti-suit injunction.

1 So when we filed our opposition to the stay, the
2 Celsius administrator responded by filing a lift stay motion,
3 months after they filed the lift stay motion in this court,
4 essentially acknowledging that they needed to get relief of
5 the Bahamian court, as Ms. Roll-Capp had pointed out.

6 They then filed the sur reply, the sur reply
7 taking the position that regardless of what the JOLs were
8 saying, they believed that the stay of the Bahamian court
9 only applied within the territorial jurisdiction of the
10 Bahamas, taking the position they were free to go anywhere in
11 the world and seek to recover assets of FTXDM without relief
12 from the Bahamian court.

13 So we have now filed a belt and suspenders anti-
14 suit injunction action against them in the Bahamas to ensure
15 that pending further order of the Court, they're not free to
16 go around the world and seek to have their claims liquidated
17 anywhere else, which would be a stay violation. So that's
18 the current state of play.

19 So now, we have a lift stay pending against the
20 JOLs here in New York. We have a lift stay pending in the
21 Bahamas. We have an anti-suit injunction application pending
22 in the Bahamas, and we think that the Bahamian court should
23 get the first shot at deciding, then have this court address,
24 to answer your sequencing point.

25 We don't believe it would be appropriate for Your

1 Honor to rule on the Chapter 15 lift stay and then send it
2 back to the Bahamian court to address the lifting of the
3 Bahamian stay.

4 And this is fundamentally a question of comity
5 between this court, not the New York Bankruptcy Court, but
6 this court as the Chapter 15 court and the Bahamian court as
7 to how to best protect their common debtor and their
8 creditors.

9 I don't want to spend too much time on comity,
10 other than to say it's -- I've always found it to be a do
11 unto other courts as you would have done to yourself. This
12 is a question of a claim being asserted against the Bahamian
13 Debtor in a different proceeding. And I believe Your Honor
14 would be rightfully upset if what happened here is the
15 Celsius administrator had gone to the Bahamian court and
16 asked the Bahamian court to rule on whether or not their
17 claims against the U.S. Debtors were timely or valid or
18 anything else. This is fundamentally a core responsibility
19 of the Bahamian court to allow or disallow claims against the
20 Bahamian Debtor.

21 But I want to, you know, beyond that general
22 concept of comity in which a Chapter 15 court routinely
23 defers to an appropriate, sound decision of a court in the
24 foreign main proceeding, there's a very specific reason why
25 we're asking the Bahamian court to address this, and I'm

1 going to have to back up for just a second.

2 You heard earlier today in the confirmation
3 hearing the discussion of a customer claim and how that was
4 defined in the classification scheme of the Chapter 11
5 Debtor's plan. We also have a customer/noncustomer
6 delineation in the global settlement agreement which Your
7 Honor approved and which the Bahamian court has approved and
8 which will go effective when the U.S. Debtor's Chapter 11
9 plan goes effective.

10 There is a definition of FTX customer entitlement
11 claim that's at page 8 of the GSA which is attached to JOL-1.
12 And it makes very clear that a customer claim are monies that
13 were deposited on the exchange in the name of the creditors.
14 Celsius is not alleging that the customers were -- or that
15 they were a customer of the Debtors. Their argument is
16 customers of the Debtors moved our money. So they do not fit
17 the entitlement of customer claims which will receive
18 depending on where you elect essentially the same treatment,
19 whether you're in the Bahamas or the U.S.

20 THE COURT: How did they file it in the Bahamas?
21 Is it similar here? We had customer claims and noncustomer
22 claims. It had a different proof of claim form.

23 MR. SHORE: They filed a noncustomer claim.
24 They're contending that they have a customer claim. But I
25 don't -- when we're talking about cause and likelihood of

1 success, I, for the life of me, don't understand their
2 argument.

3 THE COURT: Is it the same issue that they claim
4 they have an ownership interest in the customer's account?

5 MR. SHORE: It's not in their lift stay motion.

6 THE COURT: Okay.

7 MR. SHORE: So I don't know. The issue of a
8 noncustomer claim is as follows. Under the approved GSA, the
9 Bahamian Debtors have \$15 million to pay noncustomer claims,
10 and in those noncustomer claims include all the trade of all
11 the Bahamian operations of the Debtors that existed as of the
12 petition date. That amount was set as part of the process
13 long before Celsius ever decided to come forward and say
14 they've got a 350-plus million dollar claim. But that is now
15 final.

16 And so one of two things is going to happen. If
17 that claim is allowed in the amount they want, the trade will
18 get wiped out in the Bahamas, just diluted down to nothing.
19 Or there will be potentially residual money which will flow
20 back to the United States estates through the mechanisms of
21 the GSA.

22 If that's going to be the effect of the allowance
23 of this claim, it would seem to me that the Bahamian court is
24 the best court in the first instance to address who's going
25 to be liquidating that claim and in what timeframe.

1 If what's going to happen here is the noncustomer
2 entitlement pool is going to be held up while this claim is
3 litigated in a New York Bankruptcy Court pursuant to the
4 Federal Rules of Civil Procedure and the Federal Rules of
5 Evidence, the Bahamian court should be the one deciding
6 whether or not we can all sit around and wait for that to
7 happen or whether this gets addressed in the Bahamian
8 proceedings.

9 So to answer your question, why shouldn't I just
10 lift the stay and send it back to the Bahamian court, it's
11 because from a comity perspective, it's more appropriate, we
12 believe, for Your Honor to say, you know what? Why don't I
13 hear from the Bahamian court on issues that are central to
14 its estate, and then I'll decide whether or not it's an
15 appropriate order, which I will recognize in the Chapter 15,
16 or I'm going to go a different way and lift the stay, or I'm
17 going to go a different way and not lift the stay, however
18 you want to do it.

19 But it seems from a sequencing perspective in a
20 15, it's better to have the foreign main proceeding court
21 address that originally.

22 To the extent, though, that we're going to get in
23 to the merits of the lift stay motion in the 15, I've got
24 four reasons why you should not lift the stay.

25 First, the Bahamian court's always going to have

1 to act here. Lifting the stay doesn't take away the need for
2 the Bahamian court to deal with the anti-suit injunction with
3 the lift stay motion or, as counsel just pointed out,
4 domesticating the judgment.

5 Lifting the stay though, point two, is going to
6 create another forum in which we're going to have to do
7 battle with them over a \$15 million capped recovery. We
8 should be looking for ways to streamline the process, not to
9 fall into the trap that all U.S. people want to do is
10 litigate. We don't.

11 We're trying to resolve a limited pool situation
12 and exploding this into necessary proceedings in the Bahamas
13 and allowing a preference litigation to go forward in New
14 York doesn't seem an appropriate way to conserve resources
15 here.

16 But more importantly, if you look at the Rexing
17 (phonetic) factors, there are some key issues here that Your
18 Honor would have to rule on, which in fairness should be done
19 by the Court. In order to lift the stay, you're going to
20 have to find that the DM estate is not prejudiced.

21 But the question of prejudice to the DM estate,
22 particularly laying out what I just did with respect to the
23 treatment of noncustomer claims, I don't know that you're in
24 a position to address that as well as the Bahamian court or
25 that you have the record from which you can make that

1 conclusion.

2 And think about likelihood of success on the
3 merits. Counsel stood up and said this is easy, it's just a
4 preference action. Preference action to go forward in New
5 York. New York court can deal with this, but we all know
6 from our experience in this case that it's not that easy.

7 Think about one issue, the ownership of the
8 assets. Under the DM terms of service. Is the DM estate an
9 initial transferee? That is, that the money was transferred
10 to them. Is it a subsequent transferee? What happens with
11 respect to commingling?

12 Your Honor is appropriately making those decisions
13 for the U.S. Debtors. But opining on, without a record in
14 front of you that they have a likelihood of success that
15 they'll be able to show that the Bahamian Debtor was a
16 subsequent transferee, that is, the title to those assets
17 went to the customers and that somehow we took it later, I
18 don't know how you go about addressing those concepts.

19 Same with the issue of can they get an attachment?
20 They have a likelihood that they're going to be able to get
21 this customer money at a later date. How does Your Honor
22 rule on this record with respect to the ability of the
23 Bahamian court to garnish creditor distributions?

24 And then finally, I don't think there's any rush
25 here. Why does this have to be decided now? Again, we have

1 the motions pending in the Bahamian court. Counsel pointed
2 out in her supplemental sur sur reply declaration that the
3 Court's expected to act.

4 The only issue that counsel raised was, well,
5 we're further along in this proceeding. But the reason
6 they're further along in this proceeding is because instead
7 of filing their lift stay application on June 5th in the
8 Bahamian court, just like they did here, we're just further
9 behind in sequence.

10 So they can't -- they can't create the problem and
11 say we should be proceeding here in New York because we
12 didn't file our lift stay motion until two months after we
13 were supposed to.

14 So I think at this point, again, primarily, I
15 think this is a question of comity that Your Honor should
16 just be deferring to the Court. We can come back quickly to
17 Your Honor after the Bahamian court decides whether or not to
18 leave lift the stay to see where that claim is going to be
19 liquidated and we can handle it quickly with Your Honor.

20 I'm not going to necessarily have a problem while
21 reserving rights if the Bahamian court says I'm lifting the
22 stay and allow it to go forward in New York, and I'm going to
23 have a hard time arguing to Your Honor that you should stop
24 it.

25 But by the same token, if the Bahamian court says

1 I'm not lifting the stay, even if Your Honor were inclined
2 under U.S. law, if this was a Chapter 11 debtor to allow it
3 to proceed in the New York court, I think really you should
4 be deferring in that case to the Court, reserving your right
5 to find that in recognizing that order there was some defect
6 in due process or something like that that you wouldn't want
7 to recognize that order.

8 So I think sequencing, let's go first. But if
9 you're inclined to take it up, let's go first in the Bahamas.
10 But if you're inclined to take it up, I'd ask that you deny
11 it.

12 THE COURT: Okay. Thank you.

13 Mr. Levy?

14 MR. LEVY: One moment, Your Honor.

15 THE COURT: Yep.

16 MR. LEVY: Thank you, Your Honor. Let me be
17 brief, Your Honor, but the first thing I do want to say is
18 that the anti-suit injunction is news. We haven't been
19 served with it. We know little, if anything, about it other
20 than what Mr. Shore has explained today. Another 11th hour
21 tactic to try to delay this proceeding.

22 In any event, I have told Your Honor that we know
23 we have to go back to the Bahamas at some point for final
24 allowance of our claim, which we hope the merits of will be
25 litigated in the United States. We know that the stay in

1 Bermuda -- in the Bahamas is not extraterritorial. The fact
2 that they filed an anti-suit injunction this morning, I
3 gather it was this morning, just proves the fact that the
4 Bahamian stay doesn't extend beyond the shores of the
5 Bahamas.

6 Now, this is a non-routine case. Mr. Shore would
7 have you believe that courts always defer in a Chapter 15
8 situation in comity rules. This is not a routine case. This
9 is a case in which distributions are being made under
10 different plans to customers of DM, the Bahamian Debtor, and
11 money is already going out the door.

12 We now have a -- it's almost ready to go out the
13 door. We now have a confirmed plan through the gentleman
14 sitting to my right. The efforts of the Debtors. That's
15 going to start.

16 In the meantime, whatever rights we may have that
17 we can demonstrate to a court with jurisdiction to hear our
18 claim, we run the risk that the remedy is being frustrated
19 merely by the passage of time.

20 I will note, Your Honor, one of the last things
21 Mr. Shore said was who do we really have a right to recover
22 against? It's clear in our papers, Your Honor, that the
23 progression is Celsius to initial transferees, the customers.
24 We win. We have rights against them, but we also have rights
25 to go down the chain. How FTXDM held its assets, we'll get

1 to that point if we need to. We have a right to look to any
2 initial -- to all of the initial transferees and all of the
3 subsequent transferees that we can find, recognizing under
4 Section 550, we only get one single recovery per transferee,
5 per initial transfer. So we'll get to that point, Judge.

6 But those points belong with the Court having
7 jurisdiction over the adjudication of a proceeding, which we
8 believe should be the United States court. Under comity
9 rules, I don't think that that necessarily applies here,
10 Judge, because we are asking the Bahamian court to let us
11 come back here just as we are asking you to endorse our
12 application.

13 And this is a dual court situation because we have
14 two debtors. We need, Your Honor's imprimatur. We need the
15 Bahamian imprimatur. There's no harm for Your Honor to rule
16 on this at this point and let us take that ruling back to the
17 Bahamian court to say, look, we have a U.S. judge recognizing
18 that the claims on which we plan to sue are U.S. claims under
19 the Bankruptcy Code which the Bahamian courts do not
20 administer.

21 Ms. Roll, when I was speaking earlier, said she
22 doubted that a Bahamian court would recognize a U.S.
23 preference claim. She didn't have any citation to
24 (inaudible). It was her doubt. It was not an absolute
25 statement that it will never happen.

1 And I suggest, Your Honor, that because we don't
2 intend to use the Joint Liquidators' adjudication process, if
3 the Bahamian court will let us take on a proceeding, it's
4 going to be handled by a court here. And that court's
5 judgment, hopefully in our favor, we will take back for the
6 adjudication process.

7 Your Honor, I think that's all I have. Unless you
8 have questions.

9 THE COURT: Okay. No questions. Thank you.

10 MR. LEVY: Thank you, Judge.

11 THE COURT: All right. I'm not going to lift the
12 stay at this point. I don't -- I just don't have enough
13 information, I think, and I think a lot of this is going to
14 be connected to what I do with the U.S. Debtors if I'm going
15 to lift the stay for them. And I'm not going to make that
16 decision until I decide whether Celsius actually even has a
17 claim against the U.S. Debtors.

18 So there's a lot of steps here that need to be
19 happening before I get to a decision about whether I'm going
20 to lift the stay to allow something to go forward in New York
21 that might have an impact on this case and my decisions about
22 the U.S. Debtors as well as their Haitian Debtors.

23 So at this point I'm not going to rule. I'm going
24 to hold this in abeyance until I rule on the question of,
25 one, whether Celsius has a claim against the U.S. Debtors

1 and, two, whether I would lift the stay against the U.S.
2 Debtors and allow the case to go forward in New York or
3 whether to allow it to go forward here.

4 And I think once I make those decisions, then we
5 can follow along with what happens with the Bahamian Debtors
6 at the end of the day.

7 MR. LEVY: Your Honor, one housekeeping matter
8 that I should have addressed while I was at the podium, my
9 local counsel reminds me that as the movant in this matter
10 and subject to Your Honor's having taken, will take it under
11 advisement, carry it without a decision because obviously the
12 decision may affect us, given that we have a tolling
13 agreement.

14 I should move the admission of all declarations
15 and exhibits into the record so that it is complete before
16 Your Honor.

17 THE COURT: Which declarations are we talking
18 about?

19 MR. LEVY: The Roll declarations. They're in the
20 exhibit list, Your Honor. But the exhibit lists, Your Honor,
21 that were filed for this proceeding.

22 THE COURT: Weren't they admitted in the first
23 hearing?

24 MR. LEVY: It's at Docket No. 192 is the full list
25 of exhibits and declarations.

1 THE COURT: I think all of them have been admitted
2 at this point, they were either admitted the first hearing --

3 MR. LEVY: Your Honor, Ms. Burnside's declaration.
4 That was --

5 THE COURT: That, I said, was submitted.

6 MR. LEVY: Yes.

7 THE COURT: So everything's in already.

8 MR. LEVY: Thank you, Judge.

9 THE COURT: Okay. All right. Anything else?
10 Okay, well, thank you all very much. As I said, I will try
11 and get these rulings out as quickly as possible, because I
12 know we need to start moving things forward and get these
13 issues resolved. So I thank you all for your patience, and
14 we are adjourned.

15 MR. GLUECKSTEIN: Thank you, Your Honor.

16 (End of Proceedings.)
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling October 8, 2024
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams October 8, 2024
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable